INDIAN STATES AND THE GOVERNMENT OF INDIA

By the same Author

GULAB SINGH, FOUNDER OF KASHMIR

With Sir K. N. Haksar
FEDERAL INDIA

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AND THE
GOVERNMENT OF INDIA

BY

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PREFACE

I HAVE taken the opportunity afforded by this new edition to revise some of the chapters in the light of more intimate knowledge. I have also added three new chapters, which I hope will make the book more comprehensive. The new chapters deal with political practice, with the economic relations of the States with British India, and with the line of development for the future.

The Indian States have of late been the subject of much controversy. It is impossible to avoid a spirit of partisanship in matters which are actively agitating the public mind. The first edition of the present work was published as an objective and impartial study. Every effort has been made to see that in the new chapters which have been added and in the old chapters which have been revised the same spirit of independence and impartiality is maintained.

My obligations are many. I am especially grateful to Sir Kailas Haksar, who read through some of the chapters, though in a few cases he was unable to agree with me in the opinions I have expressed in them.

I wish also to express my obligations to Mr. P. K. Wattal, of the Accounts and Audit Service of British India, recently Finance and Development Minister to the Kashmir Government, for his numerous and valuable suggestions, and to Mr. K. C. Neogy, whose intimate knowledge of the history and constitutional position of the States of Bihar and Orissa has been of great help to me in understanding their special problems.

I hope that the revised and enlarged book now pre-

sented to the public will be found more useful than the previous study, which was necessarily incomplete, being, as it was, a first attempt by one without direct and personal knowledge of the actual working relationship of the States with the Government of India.

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INTRODUCTION

THE purpose of this book is not political in the ordinary sense of the word. It is not an attempt either to justify the existence of Indian States or to attack their methods of government. My object has been to analyse and interpret the unique system of polity that has developed in India, partly as a result of policy and partly as a result of historical accident. The internal States of India and their relation with the British Government afford no parallel or analogy to any institution known to history. The political system they represent is neither feudal nor federal, though in some aspects it shows similarities to both which have misguided alike the statesman and the political thinker. It is not an international system, though the principal States in India are bound to the British Government by solemn treaties and are spoken of in official documents as allies. Nor would it be correct to consider it a political confederacy in which the major partner has assumed special rights, because it is admitted by all parties that the constituent States have no rights of secession.

A polity so curious and so unique deserves to be studied and analysed without any other direct political motive than that of scientific interest. Unfortunately, from thinkers and writers on political law it has not so far received the attention it deserves. Sir William Lee Warner, the only writer of any consequence who attempted to deal with this problem, was an eminent member of the Indian Civil Service, and he was naturally much impressed by the analogy of Roman Imperialism and pushed it to the length of claiming for the Paramount

Power unlimited right of authority over the States. A purely objective attitude was impossible in his case, and his book, extremely valuable though it be for the inside information which it contains, is hardly more than a justification of the claims of the Political Department. Sir Louis Tupper's book on the Indian Protectorate is an avowed attempt to establish the feudal theory, which even the Government of India have never officially sought to put forward. He sees in the relation between the Paramount Power and the States all the important elements of feudalism. He says: 'If the fiefs were isolated, so are the Native States. If the holders of the fiefs enjoyed immunity from the laws of any external power, so in general do the chiefs exercising various degrees of internal sovereignty. Even in the methods by which the system of protectorate had been gradually formed we see likeness to the process of feudalisation.'[1] Whatever other interpretation the relationship between the British Government and the Indian States may bear, it certainly is not feudal, nor could the historical circumstances by which the Nizams of Hyderabad, the Rajahs of Travancore, the Rulers of Bhopal and the Scindias of Gwalior came to be allied for purposes of defence, be described as processes of feudalisation. The word 'feudatory,' which was loosely used in earlier times, was probably responsible for so untenable a theory, which, however, finds no advocates in any quarter now.

No other work of any importance besides these two has been attempted. The need for a new study has long been felt. The position of the Princes has considerably changed during the last seven years, and the feeling has gained ground that the system of public law which governs the relations between the Government and the States is a complicated labyrinth to which it would be unwise and impolitic to apply any uniform principle. The tendency of an earlier generation was towards uniformity, to apply to all alike a code of political practice

[1] Tupper, *Our Indian Protectorate*, London, 1893, p. 239.

developed from precedent and theory. This has now been given up, and it has been publicly recognised that the relations of each State with the Paramount Power will be decided purely by reference to individual agreements and treaties or on the basis of general principles accepted by the Princes' Chamber. The theory that the rights and privileges of States are derived directly or indirectly from the Paramount Power, and are not inherent—a position which Lord Curzon took up in his public speeches—has also been given up. It is now recognised that the obligations are bilateral. A new position has hence arisen which is more in accordance with historical facts and which makes a restatement of the position necessary. My endeavour in this study has been merely to present the facts and analyse as best I could the political system that is based on them.

To the student of political science the subject is one of special interest. It raises so many questions with regard to the nature of sovereignty, the basis of law, the position of the judiciary in subordinate States, that an examination of the subject in all its aspects would illuminate almost every side of political theory. Nowhere has the division of sovereign attributes been carried to such an extent. The Indian States include among them every variety of political community ranging from a full-powered sovereign State, like Hyderabad or Gwalior, whose rulers enjoy legally 'unrestrained powers'[1] of life and death over their subjects, and who make, promulgate and enforce their own laws and maintain their own armies, to small chieftainships of a few square miles of territory. Though the rulers of the bigger States are subordinate[2] to the Government of India, their laws are supreme in their own States, and there is no appeal from their courts even to the Privy Council. The writ of His Majesty does not run in the States, and the surrender of criminals is governed by separate agreements. The States of India

[1] *Lord Chelmsford's Speeches*, vol. ii. pp. 150-1.
[2] *Ibid.*

have been a standing repudiation of the Austinian principle of sovereignty, and it was after his direct experience of them that Sir Henry Maine came so strenuously to hold that sovereignty is divisible, and to deny emphatically the conception that had persisted through centuries in European political thought, that sovereignty is one, indivisible and inalienable. I must admit beforehand that no attempt is made in this book to discuss these theoretical questions beyond presenting a few facts which may have an interesting bearing on them.

Two things make the study difficult. First, there is the vagueness of the term ' Indian States,' which brings under one category a full-powered treaty State, like Hyderabad or Gwalior, and a chief holding a fief under a grant from the Paramount Power and the lord of a a petty estate in Kathiawad. The attempt to classify all the States under one heading has been the cause of much confusion. It is impossible to find anything like common ground between the Chief of Ilchalkaranji or the Nawab of Banganapalle and the Nizam of Hyderabad or the Gaekwar of Baroda. Yet in the popular mind, and till recently to a large extent in the practice of the Political Department, these rulers were really members of the same class and stood in very nearly the same relation to the Government of India. They were all alike classed as feudatories and their territories as ' Native States.' A classification more closely approximating to facts is the first necessity in the study of the relations between the Government of India and the States. But this is not so easy as it looks. A century of political practice has altered the original character of many States, and a classification based on rights is possible only on a close examination of the secret archives of the Political Department of the Government of India. In fact when the full-powered Princes made an attempt to establish such a differentiation as a preliminary to the constitution of the Princes' Chamber, Lord Chelmsford pointed out that the course suggested would be impossible and that

the salute list, imperfect as it was, was the only available method of classification. However that be, the first thing necessary to keep in mind in the study of problems relating to Indian States is that the relationship of no one State with the Government is like that of another, though a broad differentiation based on similarity of historical circumstances may be traced, by which it would be found that the Princes and chiefs fall into three distinct classifications—those whose treaties entitle them to full and absolute sovereignty within the State; those who, though treaty States, enjoy criminal and civil jurisdiction and legislative powers only under supervision, and those whose rights are based on grants and *sanads*. This broad line of distinction is the main fact that has to be kept in mind in studying the question of Indian States.

The second and more difficult thing that stands in the way of a proper study of this question is the absence of any regular sources of information. The Government of India has always treated the subject as a sacred mystery. The practices and precedents with regard to each State differ greatly, and even Indian Dewans with direct experience of political dealings naturally come to know only how the particular State with which they are connected stands in relation to the Government of India. There is, of course, no secrecy about the actual treaty or the main agreements that supplement it. But notoriously the political law of India is not governed solely by treaties or by agreements, but by a complex code which is the accumulation of practice in the Political Department. Indeed the political usages and customs which govern the relations of the States with the Government form a kind of semi-international law which is too delicate to codify and too complex to be analysed. Strictly speaking, they do not form a constitutional law in the Austinian sense of being 'a compound of positive morality and positive law which fixes the structure of a government.' Neither can they be described as being a part of International

Law. No Indian State is entitled to quote the principles of International Law or precedents in its relations with the British Government; although this is often done for purposes of persuasion and elucidation, it is not considered binding on either party, however conclusive in its application. Tupper, indeed, holds that the practice of the Political Department is positive law, as it can be enforced by the Paramount Power. No Indian State with full internal autonomy would accept this view or even concede the right of the Government to enforce the political practice, though on the basis of superior force the States have often to yield to the dictates of Simla. The Nizam in his letter to the Viceroy dated October 25, 1923, put forward this point of view in the following terms: The rejection by H.M.'s Government of his claim to the restoration of the Berars 'can only be a fact expressing its view, but it cannot impose upon me or my house the obligation to treat the subject as closed or regard the claim as barred for all time.'[1] But that does not establish a legal sanction, and the major part of the principles by which the relations of the States and the Government are controlled, is no more positive law than are the customs and agreements which exist between independent political communities. With regard to certain fundamental and basic conceptions this would not, however, be wholly true. There are certain constitutional facts which are acknowledged alike by the Princes and by the Government which no ruler can question or deny, such as the prohibition of private war, the limitation of armaments, etc., a breach of which would give the Paramount Power the right to enforce legal sanctions. This point was emphasised by the Viceroy in the historic correspondence that took place in 1926 between the Government of India and the Nizam. The Nizam had claimed that in regard to internal matters his government was independent and on a position of equality with the British Government. He denied the right of the British

[1] East India Correspondence—Hyderabad, Continuation of Cmd. 2439, p. 4.

to make binding decisions on matters relating to his controversies with the Government of India. Lord Reading's reply, which was textually approved by the Secretary of State, declared: 'I regret I cannot accept Your Exalted Highness's view that the orders of the Secretary of State on your representation do not amount to a decision. It is the right and privilege of the Paramount Power to decide all disputes that may arise between States or between one of the States and itself.'[1] But this principle has to some extent been recognised even in international law, especially in the Covenant of the League of Nations, which lays down the principle of international action in case of a breach of obligation. On these specific matters something like a positive public law is traceable; but the great majority of questions that arise in the daily relation of Indian States with the Government have nothing to do with these basic principles. On those matters usage and custom are extraordinarily varied and complex, and in many cases merely inchoate. This is what makes a comprehensive and authoritative study, except by one who has occupied responsible positions in the Political Department, absolutely impossible.

At this present time no elaborate plea for the existence of Indian States or even a justification of their existence is necessary. They are political facts which, whether we like them or not, stare us in the face and to a large extent govern the course of our political evolution. While their faults are many and the difficulties that their position raises grave, there can be no doubt that they add greatly to the richness and variety of India's national life and fill a position which has politically and culturally a value of its own. From the point of view of the British Government their importance has long been recognised. Sir John Malcolm, one of the most talented of Anglo-Indian statesmen, whose knowledge of Indian States was in many respects unique, declared as long ago as 1825: 'I am decidedly of opinion that the tranquillity, not to say

[1] East India Correspondence—Hyderabad, Continuation of Cmd. 2439, p. 4.

degree that we cannot appreciate now. The very conservatism of the rulers has been a source of strength to them in this rôle. In the midst of a changing and disintegrating society, the States have in many cases preserved the solidarity of the social structure and kept intact the imperceptible bonds that unite classes and castes into one community. That is the explanation of the almost total absence of communal antagonism in the States, except that which is directly encouraged or imported from British India. Village life is vigorous, and there is almost undisturbed social harmony. This obviously is not due either to efficient administration—for in many States such a thing is unknown—nor is it a result of a purposive policy, for the rulers in many cases unfortunately have only their pleasure and their sport at heart. A more fundamental cause has to be sought, and that, in my opinion, is found in the fact that society has continued practically undisturbed in these areas, while in British India new currents of life and new and changing political and social conditions have tended to disorganise and render ineffective the unseen forces behind the structure of the community. This is certainly not all to our advantage, for progress can come only through purposive evolution, and a static society must tend to weigh down both individuality and activity through the leaden weight of encrusted custom. But, all the same, a conservative tradition has much in its favour, especially in the midst of a society which is changing fast through the contact of dissimilar cultures. Moreover, to a large extent the States have served the cause of India's civilisation by acting as a refuge of certain valuable forms of intellectual activity which, through one circumstance or another, could not find adequate support in British India. Especially in the development of vernaculars, through which alone can education ever reach the mass mind of India, the States and their governments have rendered a common service. The Nizam's government has founded a university in which the course of instruction is entirely

in Urdu. The encouragement given by the Mysore University to Canarese and by Travancore to Malayalam has gone a great way in modernising those languages. Indian music and architecture survive now mostly in the States and find their patrons mainly among the more old-fashioned rulers and noblemen. It is true that in a few cases the rulers may seem to have taken to ultra-modern things, but they are exceptions which help more to emphasise the conservatism of the other rulers than to obscure it.

If there are undoubted advantages of this kind, there are also considerable disadvantages. The seamy side of court life needs no emphasis here. An occasional incident causes to be thrown on the life of Indian Princes a glare of light which exposes it to the gaze of all the world. It is not part of our purpose here to go into this. The only thing we have to note in regard to the degrading luxury and the meaningless pomp of certain Indian courts is that such a result is inevitable when there is no sense of direct responsibility in the Princes. In olden times a despot who oppressed his subjects or a debauchee who looked only to his pleasure was not left long undisturbed. Either an outside invasion or an internal rebellion put an end to his career. But the British Government now supports the ruler as long as he is loyal to his agreement and does not too openly violate civilised conventions. The ruler is left free in such a case to do whatever he pleases with his treasury and to gratify his personal pleasures at the expense of his subjects. What is really objectionable and leads to much of the misgovernment of the States is the failure on the part of a great many of the rulers to distinguish between their private income and the revenues of the State. A good many of them look on their dominions with a proprietor's feeling. To my knowledge one important ruler used always to allude to his territories as 'my Estate.' It is this feeling of proprietary authority in the case of a large number of Princes that leads them

to an inadequate appreciation of the financial needs of government and a largely exaggerated view of their own necessities.

More important than this, and entirely unconnected with the personality of the rulers, is the question of the rights of the State subjects. The State subjects, we are told, have a dual allegiance ; one to their immediate ruler and the other indirectly to the Paramount Power. But they seem to have no rights as against either. If an autocratic ruler confiscates property and arrests and imprisons for no reason, there is no court to which appeal can be made and no authority which will uphold just rights. I do not suggest that many Indian rulers do this. There are many States, like Mysore and Travancore, in which constitutional government has been established over a long period and where the subjects enjoy perfect freedom of person and property and security from aggression. But it is notorious that there are a few States in which as against the ruler the subjects have no rights whatever. The most elementary rights may be denied to them. In ordinary cases the British Government would hear no petition, nor, in any but the most exceptional, could it take any effective action. While under the rule of the Princes the ryots as a whole are undeniably happy—political rights and liberties have but little to do with the happiness of the ordinary citizen—it cannot be denied that the political position of the subjects of these States is anomalous and sometimes lacks the guarantees of ordinary citizenship. This is really at the root of educated India's hostility towards the Princes. Unless the Princes as a whole realise that they have duties as well as prerogatives, that their subjects are entitled to the largest amount of freedom and the most unhampered exercise of civil rights compatible with the safety of the community, that persons and rights are inviolable, progressive thought in India will look upon them with suspicion. The crux of the problem of the Princes so far as Indians are concerned lies here.

That, however, is outside the scope of my work. My purpose is merely to study the relations subsisting between the Princes and the Government of India, and their future evolution. I have rigidly kept out all matter, however interesting, which has no bearing on the problem before me. I can only hope that the book will be found interesting both by professional students of politics and by the lay reader. Indian politicians have so far sadly neglected this problem, and if my work helps in the least to focus the attention of the political world of India upon this all-important question, I shall feel recompensed.

I

EARLY DAYS

THE problem of Indian States, though in its present form almost entirely a result of the British occupation, and connected with the history and accidents of British growth, has in some respects existed all through Indian history. The imperial dynasties of ancient times in India had to deal with their *samantas* and local chiefs in the same way, and we have evidence in Asoka's inscriptions of the differentiation between border states under 'political influence' and internal states with limited autonomous rights. The same may be said of the time of the Guptas, whose imperial sway extended over India for more than two and a half centuries. The detailed descriptions of Yuan Chwang leave us no doubt that Harsha's political system was also based on a consolidation of local rulers by alliance and conquest, and some of them, like the Kumara Rajah of Kamarupa, were left semi-independent with obligations to the *parameswara* or the emperor. In fact, the Hindu ideal of *samrajya* was not that of a state which directly administered all the territory over which it laid claim to sovereignty, but of a powerful homeland under direct control with rights of sovereignty and tribute over local rulers or *samantas*. This system was inherited by the Mussulmans, who from policy continued it, as an effective reduction of all Hindu princes would have demanded a stability and military organisation beyond the resources of the Pathan adventurers who set themselves up as the Sultans of Delhi. The question of the relations of these states to the central power was seriously considered only by the

Moghuls, who, under the great Akbar, enunciated a definite policy in relation to them. He left the rulers of Rajputana and of Bundelkund undisturbed, provided they accepted the sovereignty and authority of the emperor, and derived their rights from the Moghul throne. Though the Rajput rajahs were *de facto* ruling princes, their claim to be independent rulers was never admitted by the Moghuls, who exercised the right of wardship, succession and deposition. Successive Moghul emperors from Akbar exacted obeisance from their Hindu rajahs, who enjoyed ruling rights, punished disloyalty, rewarded the faithful and gave titles of distinction. Their claim to royalty was not recognised, and in relation to the Padshas they were only subjects like the rest.

But with the decline of the Moghul power these local rulers asserted and maintained their independence, and when the East India Company began to deal with them directly, they found them *de facto* sovereigns of their states though rendering a nominal allegiance to the throne of Delhi. The chief Indian powers with whom the Company came into contact were the viceroys and governors of the Moghuls, whose subordinate relation with the descendant of Akbar and Aurangzib could not be disputed either in fact or in theory. But the position of the Company as an Indian power was the same. The grant of the Diwani converted the Company into a Governorship in Commission, and naturally the treaties with the Wazir of Oudh, the Nizam of Hyderabad and others were as between equals. The same causes that helped the Company to attain the Empire in India worked for the acquisition of independence by these Princes. More than that, in the early stages of its fight for dominion, especially with the French and with the Mysore Sultan, the Company was to a large extent dependent upon the co-operation and support of Indian rulers like the Nizam and the Nawab of Arcot, who were in alliance with it. Thus there came about the rights of independence and sovereignty which have given the immemorial

problem of local rulers in India a new political and legal aspect.

That at the end of the eighteenth century and the beginning of the nineteenth, the chief Indian States, like the Mahrattas and the Nizam, were even in the strictest Austinian sense independent sovereigns, could not be questioned. It is true that no one except Tipu took the title of king, but that was due to the same policy which led the East India Company to claim to be ruling merely on the basis of the Emperor's firman. In India it was the age of camouflaged royalty, when independent sovereigns with rights of peace and war and absolute and unrestrained dominion claimed to be merely slipper-bearers and servants. The best example of this system was the fact that, till the very last, the Peishwa, who had reduced the descendant of Sivaji to the position of a pensioner, was content with the title of Pandit Pradhan, and his succession had to be regularly recognised by his nominal sovereign at Satara. When a Brahmin envoy of Haider Ali to the court of Poona was reproached for representing a usurper, it was mildly pointed out that he was only following the example of more illustrious *durbars*. When Mahadaji Scindia, who was the virtual ruler of Northern India, visited Poona, he took with him a pair of slippers, which he humbly placed before the Peishwa and stood with naked feet at a distance. One further instance will show how far this fiction was carried. In 1803 when Secunder Jah ascended the *gadi* in Hyderabad, he had it recognised by the King of Delhi, who was virtually a prisoner and in fact a pensioner of the British, with whom the Nizam was in equal alliance.

Thus the problem of Indian States is partly inherited and partly the creation of the same set of circumstances which helped to establish British power in India. The rapid changes in the fortunes of the Company, which in the short space of fifty years obtained complete dominion over India, led to a system of complicated relationship with the States, which can only be explained in the light

of its historical growth. The different phases of treaty relations were due mostly to the different conditions of the Company's fortunes, and thus by a rapid process the treaty of mutual friendship and reciprocal obligations entered into with the earlier allies, such as the Nizam and the Rajah of Travancore, slowly become treaties of subordinate co-operation and one-sided obligation as in the Treaty of Udaipur in 1819, and the grant by the grace of the sovereign power as in the case of Indore in 1844, when the succession by adoption to the Holkar's *gadi* was sanctioned on the condition that he should derive his authority 'from being placed there by the British Government.'[1]

The historical growth of the system of Indian states in treaty relationship to the East India Company and by succession to the Crown may now be traced. The East India Company acquired the right of belligerency with non-Christian powers by the Charter of Charles II. This gave them the legal authority to negotiate engagements, alliances and treaties. Such agreements were not subject to the jurisdiction of the courts. This was decided in 1793 when Lord Commissioner Eyre, in his Chancery judgment in the action brought by Nawab Mahommed Ali of Arcot, decided that the treaties between the Company and the States were not a subject of private municipal jurisdiction.

The first treaty entered into by the East India Company with an Indian State was the Treaty of Anjengo with the Rajah of Travancore, which was negotiated by Dr. Alexander Orme, the historian's father, who was the chief of the Anjengo factory. The treaty, which was signed in 1723, was for the purpose of erecting a fort in Collache, for which the Company was to supply the artillery and munitions. The treaty also declared that the Government of the Rajah will be in league and united in good friendship with the Honourable East India Com-

[1] Despatch from the Government of India to the Court of Directors, dated December 23, 1844, par. 10. This was abrogated later on.

pany.[1] The next treaty of importance was with Savantwadi on January 12, 1730, which was a defensive and offensive agreement against Angria, the notorious pirate, who infested the west coast at that time. The same object of putting down piracy led the Company into an alliance with Jinjira in 1733. These three treaties, it will be noticed, are with minor chieftains for a purely local purpose, and have no political significance beyond the maintenance of conditions conducive to the Company's local trade. The first agreement of a general character with an important Indian power was the maritime and commercial treaty negotiated with the Poona Court, by which the Company was conceded free trade in the dominions ruled by the Peishwa. This was in the nature of a political gain, as it was the result of the successful resistance against Kanoji Angria and his sons, and of the consequent development of British sea power in Bombay. But this treaty, though it was a sign of the increasing political prestige of the Company, was only a commercial agreement. The logic of events was fast compelling the Company to stand forth as one of the political powers in the peninsula. The war of the Austrian succession soon became, so far as England and France were concerned, a race for Colonial power, and the genius of Dupleix forced the issue in the Coromandel Coast. The conflict that followed did not end even with the Peace of Aix la Chapelle, but continued till the British Company emerged triumphant with their nominee, Nawab Mahommed Ali, ruling as the Subedar of Arcot.

The first political treaty which demonstrated the changed character of the Company following this victory and the victory of Plassey was the agreement of mutual neutrality negotiated with the Subedar of Hyderabad on May 14, 1759. In South India the rivalry between Haidar Ali, the Nizam and the Mahrattas had created a balance of power ; and this gave the Company an import-

[1] Quoted in *History of Kerala* by K. P. Padmanabha Menon, Cochin Govt. Press, 1924, p. 338.

ance which was reflected in the Treaty of Masulipatam, by which the Company entered into a military alliance with the Nizam. This may be said to be the beginning of the policy of definite alliance with Indian States for the maintenance of political power. In the north, the treaty with the Nawab of Murshidabad left him a puppet.

From this time up to the time of the Marquis of Wellesley the East India Company is only one of the powers in India, and the treaties and alliances it entered into were for the purpose of maintaining its position against its rivals. The other States which were powerful enough to contest the authority of the Company were the Mahrattas, who, though weakened by the defeat of Panipat, were still the most considerable people in India ; Mysore, which under Haider Ali had become a powerful empire, and the Suba of the Deccan, which under Asaf Jah's successors was consolidating Mussulman power in the Deccan. All through this period there was also the French menace, which was never completely eliminated till the defeat of Perron's forces in 1803. The first British alliance of a subsidiary character was with princes in immediate contiguity to the Company's territories, and was frankly for the purpose of defence against the attack of these three Indian powers. The subsidiary alliances developed as a defensive system by which the Company, anxious for its trade, determined on the defence, not of its own boundaries, but of the state next to it in geographical position. This policy was later on described by a British statesman as that of defending the moon in order to ward off an attack on the Earth from Mars. It is necessary to keep this principle clearly in mind in studying the history of alliances with the Carnatic, Oudh, and the Nizam.

The first of these subsidiary treaties was made with the Nawab Wazir of Oudh. The treaty was made after the British troops had made a triumphal entry into Lucknow. If the policy and military strength of the Company had permitted, it could have then annexed the

dominions over which Shuja ud Dowla ruled. But the circumstances in which the Company was placed did not permit of such a course. It would have given the British merchants an extensive land frontier, which they would have had to defend against the Duranees from Afghanistan and the Mahrattas from the Deccan. The Company was at that time powerless to undertake a military responsibility of this kind owing to its financial weakness. The result was the subsidiary alliance by which Shuja ud Dowla was restored to authority in Oudh. The defence of the Oudh frontier was recognised to be a matter of vital concern to the Company, and the second clause of the treaty laid it down thus: 'In case the Dominions of H.H. Shuja ud Dowla at any time hereafter be attacked . . . the East India Company shall assist him with a part or whole of their forces. In the case of the English Company's forces being employed in His Highness's service the extraordinary expenses of the same to be defrayed by him.' [1]

This clause clearly explains the purpose and the policy of the Company. The East India Company realised that the defence of the frontier of Oudh was the only safe defence for them, and took responsibility for holding it against hostile attack; but the expense of this was to be borne by the Nawab. The subsidiary system began thus as a method of defence without expenditure. 'The defence of the Nawab's possessions from invasion is in fact the defence of ours,' said Warren Hastings.[2]

The Duke of Wellington (then Sir Arthur Wellesley), writing forty years later on the question of the importance of Oudh to the Company's defences, pointed out that by 'this intimate union, a barrier was provided for the Provinces under the Bengal Government. Nothing remained on the left or east of the Ganges besides the Nawab of Oudh and the Company excepting the Rohillas, and this river afforded a strong natural barrier against all

[1] Aitchison, *Treaties and Sanads* (4th ed.), 1909.

[2] Letter to Col. Champion, Gleig, i. 443.

invaders. Besides this object, the seat of war in consequence of the alliance with the possession of Oudh was removed from the Company's provinces . . . to those of the Nawab if such supposed war should have been reduced to the defensive.'

The Nawab Wazir was guaranteed absolute internal independence, which in fact he already possessed at that time. But as the strength of the Company increased and his own military power declined, he soon sank to the position of a vassal ruler. By the time of Hastings the Wazir had come ' to subsist on British strength entirely,' [1] and this gave the Company the opportunity to make further demands on him and to alter the treaties to their advantage. By the Treaty of Benares, which Hastings concluded with Shuja ud Dowla, Oudh was converted practically into a province of the Company for whose internal government it refused to be responsible. Both the Marquis of Cornwallis and Sir John Shore continued this policy so effectively that Sir Arthur Wellesley remarked caustically that the stipulation of internal independence had been uniformly frustrated by the necessarily uniform interference of the Company in all those concerns for the support of the Nawab's authority, for the preservation of tranquillity in the country and for the security of the funds from which the Company derived so important a portion of the resources applicable to the payment of their military establishment.[2]

Thus, when the Marquis of Wellesley came out as Governor-General, the Wazir's military position was a serious embarrassment to him, and as a result, after considerable pressure, a new treaty was signed, the purpose of which, as the Marquis himself (then Earl of Mornington) declared in his despatch,[3] dated November 28, 1799, to the Court of Directors, was ' to establish the sole and exclusive authority of the Company within the

[1] Letter to Lawrence Sullivan, Gleig, i. 356.
[2] *Wellesley Despatches*, edited by S. J. Owen, Oxford, MDCCCXXVII, p. lxxxiii.
[3] *Wellesley Despatches*, 188.

Province of Oudh and its dependencies.' The new treaty negotiated by Henry Wellesley and Colonel Scott isolated the territorial possessions of the Wazir by annexing to the direct government of the Company the Doab and reserved for the Governor-General 'the positive right of interference in the internal management of the country retained by the Nawab.'[1] The first 'Native State' was thus established, and a new system came into being.

The history of the Carnatic was similar. The Nawabs of Arcot were established on the *Musnad* solely by British support. But, as in the case of Oudh in the early days, there was no attempt to restrict the internal authority or external relations of the Nawab. In fact, a regular ambassador was accredited to his court from the King of England, and the Nawab claimed to be an independent sovereign in direct alliance with his Britannic Majesty's Government, as distinct from the East India Company. It was only in February 1787 that the military alliance, by which the Company undertook to maintain the troops and the Nawab to pay its subsidy, was concluded. But after the annihilation of Mysore power the necessity for maintaining an Indian State which should bear the burden of defence ceased to exist, and the Carnatic was annexed.

Though Warren Hastings himself had laid it down that the basic principle of the Company's policy was 'the extension of the influence of the British nation without enlarging its circle of defence,' the subsidiary system, by which the Company insisted on every State in alliance maintaining a body of British troops at its own expense, was a slow and gradual development. When the Maharajah of Travancore suggested at the time of Tipu's invasion that he might be supplied with a detachment of the Company's forces, for which he was prepared to pay, the Madras Government refused the request. Again, after the Mysore war, a like suggestion, when made by the Mahratta general to the Marquis of Cornwallis, met

[1] *Wellesley Despatches*, Letter to the Secret Committee of the Court of Directors, dated November 14, 1801.

with disapproval. It was only in the time of the Marquis of Wellesley that a deliberate attempt was made to develop an imperial polity based on the system of subsidiary alliance. Wellesley understood its implications and justly estimated its weakness, but came to the deliberate conclusion that, under the existing circumstances of India, an indirect extension of sovereignty in this manner was to be preferred to a direct exercise of dominion. Wellesley brought under the operation of the subsidiary system, the Nizam, the Peishwa, Cochin and, temporarily, the Rajputana States.

The history of these transactions may be briefly traced. The alliance with the Nizam dated from 1766 ; but as the power of the Company increased, the alliance underwent modifications, though not of so serious a nature as in the case of Oudh and the Carnatic. The Nizam was at the end of the century troubled by the exactions of the Mahrattas and wanted an alteration of the treaty of 1768, by which he was entitled to the support of British military forces. The explanatory letter which Lord Cornwallis gave to Meer Allum in 1789 extended the sixth Article of the treaty into a stipulation that the force mentioned therein ' shall be furnished whenever the Nizam shall apply for it, provided it is not employed against any powers in alliance with the Company.' [1] This letter of Lord Cornwallis was declared by a special resolution of Parliament, dated March 15, 1792, to have the full force of a treaty executed in due form. Though this extended significance of the treaty gave it in appearance a military character, it was in practice clearly useless, as the British forces in the pay of the Nizam could not be used against the Mahrattas, who were the only enemies then menacing him. This was soon made amply clear. The Mahratta confederacy under Parasuram Bhau Patwardhan attacked the Nizam in 1795, and at Kurdla disaster overtook the Nizam's forces. The British alliance, which was the basis of his military power, was

[1] Briggs, *Nizam*, vol. i. p. 252.

of no help, and Sir John Shore argued himself into the belief that a pacific policy was best suited to British prestige. The Nizam was temporarily turned into a tributary of the Peishwa, and he saw that the only way of shaking off that humiliating bond was to organise a standing force of his own under French commanders. The Earl of Mornington's new treaty enlarging the subsidiary force to six battalions, for which the Nizam was to pay a subsidy of 2,617,100 Rs., stipulated that the French force should be disbanded ; and that, in case of differences between the Mahrattas and the Nizam, the matter on his side would be referred to the Company. This important treaty, by which a permanent British force was stationed in the Nizam's territory and the French force disbanded, was put into operation by a masterful *coup d'état*. The importance of the treaty lay not so much in the establishment of a permanent British force in the Hyderabad territories as in the surrender by the Nizam of his external independence. A separate and secret article of the treaty declared :

> No correspondence on affairs of importance shall in future on any account be carried on with Sirkar of Rao Pandit Pradhan or with any of his dependents either by the Nawab Asaf Jah Bahadur or by the Hon'ble. Company's Government without the mutual privity and consent of both contracting parties.

By this the Nizam ceased to be an independent ruler, and his State took its place as the premier State in subordinate alliance with the British Government.

The same story is more or less repeated in the relations with the Mahrattas. By the famous Treaty of Bassein the Peishwa was also brought into the system of subsidiary alliance, by which the Mahratta State gave up its right of external sovereignty and undertook to maintain a British Force in its territories. This treaty was strongly resented by the other members of the Mahratta confederacy, with the result that they and the Company entered into a struggle in which the genius of Wellington crushed the military prowess of Perron and his Mahratta confederates.

By the Treaty of Sarje Anjegoan, Scindia's powers for offence were reduced, but that agreement was not in the nature of a subsidiary alliance. By the Treaty of Devagoan the Bhonsla Rajah of Nagpur was brought into the system. The Treaty of Ragpur Ghat closed the war with Holkar, and the supremacy of the British arms was recognised over the whole of Central India. By the Treaty of Cambay in 1802 the Gaekwar of Baroda accepted the protection of the Company, and the campaign against Scindia and Holkar necessitated the alliance with Alwar and Bharatpur.

The first period of subordinate alliance may be said to close with this. It saw the rise of the Company from a position of equality into one of predominance. But the powers with whom the Company entered into alliance were equally independent States. Sometimes, as in the Marquis of Cornwallis's alliance against Tipu, the treaties were for specific purposes as between independent powers seeking a common objective. In other cases, as in the treaty with Alwar, it was for help in reducing a powerful enemy. But in all these treaties there are three important points which stand out :

(1) In the treaties between the Company and the States, there is a spirit of theoretical equality of status, and the States are recognised as being in the enjoyment of sovereign independence. The treaty with the Nizam and the Mahrattas, who were in theory and in fact in the enjoyment of absolute external and internal sovereignty, show a spirit of reciprocity. In the treaty with the Nizam, which was entered into for the purpose of taking ' means for the mutual defence of their respective possessions,' it is stated, ' whatever transactions, whether of great or small import, may in future take place between the aforesaid Rao Pandit Pradhan, or his dependents, a reciprocal communication of the same shall be made to the other contracting party without delay and without reserve.' [1]

[1] Separate article in the Treaty of Alliance, Sept. 1, 1898, p. 170. *Wellington Despatches.*

Again, the preamble of the treaty of defensive alliance dated October 12, 1800, mentions as the objects of the treaty 'the complete and reciprocal protection of their respective territories, together with those of their several allies and dependents.' It will also be of interest to note that up to 1829 the Governor-General, in his correspondence with the Nizam, used such terms as 'Niyaz Mund,' which admitted an inferiority of rank, while the Nizam, speaking of himself, used the royal 'We.' It is not only in agreements with powerful rulers like the Nizam and the Peishwa that equality of status was recognised. In the treaty with the Rajah of Alwar, concluded during the campaign against the Mahratta chiefs, the Rajah is authorised to demand aid from the British Government 'if from the obstinacy of the opposite party no amicable terms can be reached,' which is a recognition of the rights of private and direct negotiations with other States.

(2) The second point which becomes clear is that the Company at that time had no intention of encroaching on the sovereignty of their allies and claiming for themselves the rights of an overlord. In fact, after the victories over Scindia, Lord Wellesley wrote to the Secret Committee of the Court of Directors that the object of the Company should be security, and Scindia was given the option of coming into the defensive alliance or keeping out. The policy later on pursued of evolving a state system in which the British Company would stand as a paramount overlord over subordinate allies was absent even up to the last stages of Wellesley's rule. It will be seen that in the case of the Nizam or Scindia or any of the powers which came into the subsidiary alliance there was no limitation of the armies to be maintained by them.

(3) A third consideration is that by a most unequivocal declaration in the case of independent powers brought into the defensive system, the Company guaranteed them full and absolute sovereignty in their internal affairs. Every treaty with a State previously independent, or

taken into alliance for help in campaigns, lays this down expressly. That the clause so laid down was no mere empty profession, but a legal obligation undertaken to respect the sovereign rights of the allies, is clear from the fact that Wellesley frankly recognised its ' baneful effects and implications,' and tried to remedy them wherever he could. In his despatch to the Court of Directors dated August 3, 1799, regarding the treaty with Mysore, he wrote, ' In framing this engagement it was my determination to establish the most unqualified community of interests between the Government of Mysore and the Company.... Recollecting the inconveniences and embarrassments which have arisen to all parties concerned under the double Governments and conflicting authorities unfortunately established in Oudh, the Carnatic and Tanjore, I resolved to reserve to the Company the most extensive and indisputable rights of inter-position in the internal affairs of Mysore as well as an unlimited right of assuming direct management of the Country.' [1]

Arthur Wellesley, his eminent brother, also well realised the result that would follow the subsidiary system of treaties, and pointed them out forcibly in a memorandum. He remarked : ' The treaties of alliance had a stipulation " that the Native State would be independent in all the questions of its internal government, and at the very moment in which this stipulation was made the interference of the British Government was required." ' If, therefore, after a full recognition of its weakness, Lord Wellesley had uniformly to guarantee this independence in the treaties that he made with Indian rulers, it is clear that political circumstances necessitated it and that the stipulation was made not merely to satisfy the pride of the rulers, but as a contract meant to be fulfilled to the very letter.

But these treaties of mutual amity, friendly co-operation and reciprocal obligations, were soon to end. Their place in all future engagements was to be taken by

[1] *Wellesley Despatches*, lxxvii and lxxviii.

treaties of subordinate co-operation, allegiance and loyalty. The position of the Company changed in ten years' time from that of being one of the powers of India into that of being a paramount power, and in the treaties made after 1813 this became perfectly clear.

II

FROM THE MARQUIS OF HASTINGS TO THE MUTINY

BETWEEN the annexationists, whose cause was so ably presented by the future Duke of Wellington, and the non-interventionists, who controlled the policy of the Court of Directors, Lord Wellesley's system based on the maintenance of the *status quo* in subordinate alliance, with a view mainly to securing the Company's possessions from any kind of attack, found but few supporters. Most of the officials in India were thorough annexationists, while the statesmen of an earlier generation, represented by Cornwallis, Teignmouth and Barlow, stood out for non-intervention. Both these schools based their argument on the common ground that the subsidiary alliances created a system which gave additional responsibility to the Company without strengthening its position. Thus Arthur Wellesley said : ' By this system the authority of the native governments is paralysed, and they have invariably to resort to the assistance of the British Government for the management of their own internal concerns. In fact, it naturally amounted to setting up impotent rulers, who could be of no help in case of war, but may be a considerable source of trouble if the defence of the Empire's frontier is dependent on them.' After Wellesley's departure, Barlow and Cornwallis attempted to reverse this policy, and, in fact, the interlude was one in which some of Wellesley's treaties were dissolved and further commitments refused. In 1809 Lord Minto refused to enter into an alliance with Bhopal, and the treaty which Barlow negotiated with Holkar ceded to him

Tonk and Rampoora and dissolved the treaty with Jeypore. By the treaty with Scindia at Mustaphur, the Government of the East India Company undertook not to enter into treaties with the Rajahs of Udaipur, Jhodpur and other tributaries of Scindia situated in Malwa, Mundar and Marwar, or to interfere with the settlement that Scindia might make with those rulers. The idea was, as Metcalfe points out in his memorandum, to withdraw from all alliances and connections west of the Jumna, and though the force of circumstances prevented Lord Minto from adhering to it strictly, the policy of expansion was under an eclipse until the time of the Earl Moira, later known as the Marquis of Hastings. There are exceptions of far-reaching importance in the treaties with the Cis-Sutlej States of Patiala, Nabha and Jind. These States had made friends with the Mahrattas as against the growing power of Maharajah Ranjit Singh. But after the defeat of Holkar their position became precarious. Disputes among the Phulkian rulers gave an opportunity for Ranjit Singh to intervene. It was as a result of that ambitious king's encroachments that the rulers approached the British Government for a treaty of alliance. The British Government intervened to secure the states from annexation, and by a proclamation took the Sutlej area under its protection.

In the Marquis of Hastings the Anglo-Indian advocates of *Realpolitik*, who talked about the ' proud pre-eminence ' of the British nation, found an avowed champion. The Mahratta and Pindari wars and the settlement that followed rendered the Cornwallis-Minto period a time of respite and continued the policy and elaborated the principles which had guided Marquis Wellesley. The feudatory system, which may be distinguished from the system of protected alliances, came into existence with the changed condition which after the complete destruction of Mahratta power placed the Company in a position of unquestioned supremacy in India. All the treaties made in this period with the smaller States are of a

nature different from the reciprocal treaties of mutual goodwill and mutual obligations entered into with the Nizam, Scindia and other powers of the earlier period. The Company stood no longer in need of help from the minor states, and the treaties were negotiated not for the security of the Company's dominions, as in most cases up to the end of Wellesley's time, but for the purpose of extending the benefits of the *pax britannica* and asserting the pre-eminent authority of the British. The treaties with the Rajputana States, which brought the whole of that area under British sovereignty, were hardly in the nature of reciprocal obligations. In most of these treaties, the rights of protection and the principle of subordinate co-operation of the State Government are clearly laid down.

The same is the case with Central India. No less than one hundred and forty-five rulers were recognised, but their position was distinctly subordinate. Though still declared independent in internal affairs, these States were declared to be in complete subordination to the Government of India, which, as a broad line of settlement, accepted the autonomy of these chiefs. What is to be borne in mind is that in Bundelkund, and later in Kathiawad, it was not from individual treaties, each arising from different conditions and each negotiated with guarantees of rights, that the rulers derived their authority, but on the basis of general political settlement which accepted the feudatory system prevalent in these areas. Only three States, Orcha, Datia and Samthar, are bound by formal treaties ; the rest are confirmed in their possession by *sanads*, grants and *ikrar namahs*. It is clear enough that these States stand altogether on a different footing from States like Gwalior, Hyderabad, Travancore, Baroda and the *Phulkian States*, with which the Company allied itself on specific and definite conditions.

The facts with regard to the Kathiawad rulers will explain this position better. The British rights of sovereignty in Kathiawad are based not on treaty with those

States directly, but on an agreement concluded with the Gaekwar. It states: 'With the view of promoting the prosperity, peace and safety of the country and in order that the Gaekwar's government shall receive without trouble and with facility the amount of tribute due to it from the Provinces of Kathiawad and Mahee Kanta, it has been arranged with the British Government that His Highness Sayaji Rao Gaekwar shall not send his troops into the districts belonging to the Zamindars of both the provinces without the consent of the Company's government; and shall not prefer any claims against the Zamindars or others in those provinces except through the arbitration of the Company's government.'

The States and jurisdictions thus brought under the British sway originally enjoyed no sovereign rights, though their privileges and honours were assured to them. The British Government merely took over the *sovereign rights that the Gaekwar and the Peishwa exercised over these chiefs*, and has continued to maintain them as a separate class. The engagements made with these States are generally on one pattern. They declare that the territory was received by cession from the Peishwa and annexed to the British dominions, but that the States of the chiefs are continued to them out of motives of justice, benevolence and good faith; they bind the chiefs to implicit submission, loyalty and attachment to the British Government. They are liable to such control as the British Government may see fit to exercise, and the rights and powers of the chiefs are limited to those that have been expressly conferred.[1] This position, however, was modified by later practice and usage. In 1830 the Court of Directors recognised that British rights in Kathiawad were limited to the exaction of tribute, and that the chiefs were entitled to uncontrolled exercise of authority within the States.

The other States which came under the protection of the

[1] See note on Kathiawad Chiefs at the end of the book: Appendix I; Aitchison, vol. v. p. 17.

Company's government after the Marquis of Hastings' time stand also on a different footing. The minor States of the Punjab, Chamba, Mandi and Suket were granted terms which rendered them feudatories and implied specific limitations on their rights. Kashmir, it will be remembered, was, by the Treaty of Amritsar (1846), handed over to Gulab Singh, Rajah of Jammu, in full sovereignty, for his good offices in restoring peace and amity between the Company and the Lahore Government. There was, however, a special clause in this treaty that succession to the Jammu and Kashmir State should be to the heirs male of the body of Gulab Singh. In this case evidently the clause was introduced to give the British Government the definite right of determining succession. With the extension of the system to the Punjab States, it can be said that the policy of protected and subordinate alliance reached its fullest limit.

It has already been noticed how the earlier treaties up to 1813 differed materially in the nature of the relations of, and in the position, power and independence guaranteed to, the States. The treaties with them were, in fact and not only in theory, treaties of alliance. They were entered into for the purpose of the security of British frontiers, and were more in the nature of an allied defensive system. The treaties made from the time of the Marquis of Hastings recognised the primacy of the Company, and the States naturally were placed in a subordinate position. This difference related mainly to questions of succession, annexation and the exercise of sovereign rights, as will be shown later.

The Governor-Generalship of Dalhousie, which marks an epoch in the history of British India, is important from the point of view of Indian State history only for the growth of political principles which we shall have to discuss in detail later on. Dalhousie claimed for the Government feudal and sovereign rights over the petty states which the British Company had itself set up, and rigorously applied the principle of lapse and escheat for

the purpose of annexing the dominions of minor principalities. The difference in the nature of States and the altered basis of the new treaties were fully recognised by Dalhousie, and his attempt was mainly to sweep away from the board the minor princes and *jagirdars* whom a generous policy had propped up. Sir Charles Metcalfe in 1837 classified the Indian States into quasi-sovereign states and dependent principalities, treaty princes and *sanad* chiefs, and it was on this classification that Dalhousie based his policy. With regard to those who derived their authority from the government of the Company, Dalhousie followed a policy of constructive feudalism, applying the principle of lapse, escheat, control and annexation. The rulers of Satara, Jhansi, Tanjore and Jaitpur can only be considered in a different light from the Nizam, or Scindia, or any other of the treaty princes. The Satara Raj was practically created in 1819 by the British Government, but the case of Oudh and Berar are slightly different. Oudh was not annexed on the ground of lapse or escheat, but of *misgovernment*, and it is clear that in the case of a treaty state such an action would have been illegal and highly arbitrary. But Oudh, though its rulers enjoyed the regal dignity, was even worse than a vassal state. From the time of Warren Hastings the authority of the Oudh rulers had practically disappeared. As early as the time of Wellesley, Oudh had ceased to have even the vestiges of independence, and the Company for all practical purposes treated it as a part of its own territories. Its annexation has no definite bearing on the policy pursued towards States with guaranteed independence, though the Marquis of Dalhousie's action in this case was arbitrary, harsh and altogether indefensible, based as it was on the most unjustifiable fraud committed by Lord Auckland, who refused to announce to the King of Oudh the abrogation of the treaty by which that ruler had signed away important rights. To a large extent the annexation of Oudh and the discreditable character of the negotiations that

led up to it were the reason for the deep-seated unrest which found vent in the Sepoy Mutiny.

Besides these acts of annexation the Marquis of Dalhousie's rule is important for the elaboration of principles which we shall have to discuss later in connection with the rights of the paramount power.

The effect of this system of 'independent' rule by rajahs and nawabs, whose power was guaranteed, but in whose administration no interest was taken by the supreme Government, was most deplorable. Before the alliance with the Company, these States were forced by circumstances to maintain efficiency of administration, or otherwise they would be swallowed by their powerful neighbours. They had to be economical, or otherwise the treasury would be empty when the enemy approached. They had to cultivate the goodwill of their subjects, or otherwise internal rebellion would give their enemies the best chance of conquest. With the British alliance and the security that followed thereafter all these circumstances which checked the vices of irresponsible autocracy disappeared. The courts of these princes became the theatre of the most degraded debauchery and the most horrible misgovernment. Successive British administrators and diplomatists noted this fact with some surprise. Marquis Wellesley himself recognised this, and he makes it clear in his Despatch to the Court of Directors on the Treaty of Mysore. Wellington, in a celebrated minute, discussed with surprising acumen the results of this policy, which he said 'paralysed the native ruler, and made him dependent entirely on British support.'[1] Writing on the subsidiary system and the political system based on it, after Wellesley's policy had worked for over fifteen years, Sir Thomas Munro, a great and venerated name in British Indian history, said :

> It has the natural tendency to render the Government of every country in which it exists, weak and oppressive ; to extinguish all honourable spirit among the higher classes of society, to

[1] *Wellesley Despatches*, Appendix.

degrade and impoverish the whole people. The usual remedy of a bad Government in India is a quiet revolution in the palace, or a violent one by rebellion. But the presence of the British Force cuts off every chance of remedy by supporting the Prince on the throne against any foreign and domestic enemy. It renders him indolent by teaching him to trust to strangers for his security; cruel and avaricious by showing him that he has nothing to fear from the hatred of his subjects. Wherever the subsidiary system is introduced, the country will soon bear the marks of it, in decaying villages, a decreasing population. This has long been observed in the Dominions of the Peishwa and the Nizam.

Lord Cornwallis, writing to Lord Lake on August 30, 1805, remarked on the same phenomenon: 'From reports I have received from the residents,' said the Marquis, 'I am sorry to find that the States who are most intimately connected with us are reduced to the most forlorn condition; that these powers possess no funds or troops on which they can depend; that anarchy and disaffection prevail universally throughout the dominions, and that unless the British Governments exercised a power and ascendancy that they ought not to exert those Governments would be immediately dissolved.'

The history of Indian States during the first half of the nineteenth century, when the full effects of the subsidiary system began to manifest themselves, is a strange and illuminating, if sad, commentary on this text. The Nizam's administration during the long reign of Sicunder Jah proved a standing testimony to the blighting effects of this system. Affairs fell into such disorder that the Nizam, aided by his corrupt ministers, seemed to be following the disastrous path of the Nawabs of Arcot. The administration was much in debt to Palmer and Company, and the whole system of Government had broken down, resulting at one time in the appointment of British Commissioners for the Provinces. It was only the genius, tact and diplomatic ability of Salar Jung that saved the State from annexation and ruin. The case of Oudh is notorious, and requires no elaboration. The history of

Scindia's dominions from the Treaty of Mustafanagar to the Mutiny is one of progressive decline, leading in some cases to military revolts and rebellions. The case of Holkar is more disgraceful. The administration of Maharajah Hari Rao became so unbearable that in 1835 his subjects besieged him in his palace and tried to assassinate him. Anand Rao Gaekwar's administration repeated the same sad story. After Anand Rao's death the financial and administrative position of the State became much more scandalous, and the Gaekwar was unable to pay his debts to private creditors. In Travancore, the Resident, Colonel Munro, had to take up the administration of the State, and the proposal was actually made for the annexation of Cochin on the ground of extreme maladministration. In Mysore matters went much further. A Committee was appointed in 1830 to enquire into the state of affairs, and the administration of Mysore had to be taken over by the Government.

Thus in every State which had come under subsidiary alliance, its influence led to an utter and complete breakdown of the Indian system of government. The responsibility for this lay almost entirely on the British authorities. Matters had come to such a scandalous state that the London *Times* in a remarkable leading article described the situation thus in 1853:[1]

> We have emancipated these pale and ineffectual pageants of royalty from the ordinary fate that awaits on an oriental despotism. ... This advantage (of securing able and vigorous princes through rebellion) we have taken away from the inhabitants of the States of India still governed by Native Princes. It has been well said that we give these Princes power without responsibility. Our hand of iron maintains them on the throne, despite their imbecility, their vices and their crimes. The result is in most of the States, a chronic anarchy, under which the revenues of the States are dissipated between the mercenaries of the camp and the minions of the Court. The heavy and arbitrary taxes levied on the miserable raiyats serve only to feed the meanest and the most degraded of mankind. The theory seems in fact admitted

[1] Quoted in Arnold, *Marquis of Dalhousie*, vol. ii. pp. 2-84.

that the Government is not for the people but the people for the King, and that so long as we secure the King his sinecure royalty, we discharge all the duty that we, as Sovereigns of India, owe to his subjects who are virtually ours.

This vigorous characterisation of the conditions prevalent in the States, and the fundamental cause of it, was not in the least exaggerated. The great danger to British power at the time of the Mutiny was the unsettled state of the territories administered by the Indian rulers. The soldiery of the Maharajah Scindia was in open revolt, and the military establishment of Holkar was in a dangerous state of ferment. The short-sightedness of the policy pursued towards the States between 1813-1855 became clear in the blazing light of the conflagration of 1857. Then it became evident that it was not sufficient for the British Company to go on claiming sovereign rights and annexing States, but it had also to maintain and guarantee the rights and just authority of the rulers, and that even those whose rights and dignities have been conferred by *sanads* and grants should be treated with greater consideration. The settlement that followed the 'Mutiny' marks the end of the second chapter in the history of the British relations with Indian States, when on the basis of the differentiation between independent and dependent rulers the Company tried to evolve, so far as the latter was concerned, a system of public law based on what may be called feudal rights. In the first half of that period a large number of these States, mainly in Kathiawad and Bundelkund, were created, and in the latter half a definite attempt was made to apply to them the principles of law and rights taken by analogy from the feudal law of Europe.[1] The failure of that part of the policy is written in letters of blood in the story of the Indian 'Mutiny,' and, learning their lessons from it, the British authorities wisely gave up as impracticable the policy that had led to the annexation of Satara, Jhansi, Tanjore and other minor States.

[1] See Chap. IV and Appendix, Note 1.

III

THE CROWN

THE great Mutiny and the subsequent assumption of direct sovereignty of British India by the Crown changed the whole historical and constitutional position of the Indian Rulers. From the foreign and independent allies of a sovereign corporation, the great States found themselves transferred to the protection of the Crown of England, whose authority over them was boldly and frankly announced and pressed with the unquestioned authority of irresistible military power. Lord Canning himself declared in 1862 that ' the Crown of England stood forward, the unquestioned ruler and paramount power in all India, and was for the first time brought face to face with the feudatories, and that there was a reality in the suzerainty of the Sovereign of England which never existed before and which was eagerly acknowledged by the Chiefs.' The logical implications of this change and its far-reaching influence upon the development of Indian polity will occupy the succeeding chapters. From the point of view of the historical background the important facts of this period may be noted here.

When the Company's territories were taken over for direct administration under the Crown, the Indian rulers were especially assured that the treaty rights and obligations of the States were in no way affected. The Government of India Act of 1858 contained as its last clause the provision that ' all treaties made by the Company shall be binding on Her Majesty.' The historic proclamation of the Queen put the position more elaborately :

We hereby announce to the Native Princes of India that all treaties and engagements made with them by or under the authority of the Hon'ble East India Company are by us accepted and will be scrupulously maintained, and we look for the like observance on their part.

We desire no extension of our present territorial possessions, and while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others. We shall respect the rights, the dignity and honour of Native Princes as our own ; and we desire that they, as well as their own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government.[1]

This was acceptance in full of the obligations and engagements of the Company, and though in appearance it was a pacific continuation of the old system, it effected a remarkable if a silent revolution. In the immediate relation between the States and the British power, the changes effected by the Mutiny were of importance. All the Indian rulers had remained loyal, and indubitably it was their attitude that turned the scales in the campaign. The Maharajah of Jind personally took part in the attack on Delhi, and the firm resolution of Salar Jung prevented the extension of the conflagration to the South. Naturally, after the pacification, the States which took direct and prominent part in helping the British authorities were rewarded by the grant of large territories. More than this, the policy enunciated in 1841 of '*abandoning no just and honourable accession of territory or revenue*,' which, in plain language, meant the policy of

[1] Professor Sir William Holdsworth in the *Law Quarterly Review*, 1930, pp. 417-8, has propounded the singular view that the proclamation of the Crown should be read ' subject to the superior rights possessed by the Crown in virtue of its paramountcy.' Such a condition as Sir William Holdsworth reads into the proclamation is clearly inconsistent with the Statute passed by Parliament in 1858 by which the Crown accepted in full the treaty obligations of the Company. Moreover, his contention, if correct, would stultify the whole intention of the simple and direct language of the proclamation. The Princes had stood by the British power during the Mutiny, and it was through their efforts that the Company was able to put down that movement. It is clearly ridiculous to hold that the solemn assurance given as a result of this timely help was not meant to guarantee their rights, but to reduce their sovereignty further.

annexation on any possible pretext, was reversed. The British Government definitely and deliberately laid it down as a principle for their own conduct that annexation of territories as a solution either of the problem of misgovernment, of the disloyalty of the ruler, or for strategic considerations, should be abandoned. As a consequence there developed a new policy, which accepted the moral responsibility of the British Government for a minimum of good government, security, law and order within the territories of the Indian States. Addressing an assemblage of Rajput princes, Lord Mayo, in whose time the foundations of the new policy were laid, expressed the general principles that the Government of India had accepted for the guidance of its political conduct as follows: 'If we support you in your power, we expect in return good government. We demand that everywhere through the length and breadth of Rajputana, justice and order shall prevail; that every man's property shall be secure; that the traveller shall come and go in safety; that the cultivator shall enjoy the fruits of his labour, and the trader the produce of his commerce; that you shall make roads and undertake the construction of those works of irrigation which will improve the condition of the people and swell the revenues of your States; that you shall encourage education and provide for the relief of the sick.'

That this policy involved the practice of veiled intervention and an effective reduction of the constitutional position of the princes and their conversion into dependent States, will be made clear in the succeeding pages. If it definitely put a stop to annexations it introduced in its stead rule by loaned officers, by nominated dewans, and strict control through the Residents. The attempt was to aggrandise not the territories, but the power of the Central Government, and to make the Indian States integral portions of the Indian polity.

This policy was based on the pseudo-legal theory that the rights of the Moghul Emperor had accrued to the

British as a result of the displacement of the Padshah at Delhi following the Mutiny. The British Crown not only claimed to stand forth in the place of the East India Company, with whom many of the States had had treaties on the basis of equality, but itself put on the decayed mantle of the Moghul Empire and claimed the rights of sovereignty which Akbar and Shah Jehan had enforced. This theory found a pompous expression in the title of Kaisar i Hind assumed by the Queen in 1876, immediately after the death of Bahadur Shah, the last Indian sovereign who sat on the throne of Delhi. To enforce this, a Durbar was held in Delhi, which Lord Hartington declared to be the assumption of the fallen estate of the Moghul emperors. To this Durbar all Indian States were invited, and in effect were forced to attend. The Nizam, to whom the Governor-General up to 1829 had written in terms of humility, and with whom a treaty had been made on terms of equality; Scindia, whose alliance left him independent ruler of his State with obligations on a reciprocal basis; Travancore, whose Maharajah was an ally of the Company before it ever acquired even dewany rights, were forced to attend the Durbar at Delhi, and to realise that their position was constitutionally altered and that they bore allegiance to the Empress, equally with the numerous petty chiefs of Mahikanta and Rewakanta and the other new creations of British policy. Against this claim by the Crown, the Nizam and other important rulers strongly protested as a lowering of their dignity and an encroachment on their sovereignty. But before the might of Britain they had to stoop, and the imagination of Lord Lytton and the love of colour and extravagance of Disraeli were satisfied with the pomp and pageantry of an assemblage of princes such as the world had never seen before.

That this theory had not any justification either in history or in law cannot be too strongly emphasised. The deposition of the Moghul Emperor did not make the Crown the testamentary successor to Moghul preten-

sions, because the Crown's rights over Indian States were based on the Statute which expressly laid down that the treaties and obligations made by the East India Company were binding on the Crown. If they were so binding, naturally the Moghul claim falls to the ground. Moreover, during the debate on the Imperial Titles Act, Disraeli's government assured Parliament that the assumption of the title of Emperor did not make any difference to the relationship subsisting between the Crown and the States.

Lord Lytton's proposals at the time of the first Durbar included an Indian peerage, a privy council of princes and Durbars at regular intervals. This policy was much resented by the princes, and was as a result abandoned by the Government in its more elaborate forms.

All the same, the relationship underwent a subtle change. The theory was laid down that as against the 'Paramount Power' the Treaty States had no 'rights,' that all their privileges, status, rank, dignities and jurisdictions were dependent on the goodwill of the King-Emperor. 'The Sovereignty of the Crown is everywhere unchallenged,' said Lord Curzon in his speech at the Bhawalpur installation. 'It has itself laid down the limitations of its own prerogative.'[1] This view was first promulgated in 1860, when Lord Canning declared that 'the territories under the sovereignty of the Crown became at once as important and as integral a part of India as territories under its direct domination. Together they form one direct care, and the political system which the Moghuls had not completed and the Mahrattas never contemplated is now an established fact of history.'[2]

But in establishing that political system, which the Moghuls never completed and the Mahrattas never contemplated, Great Britain had to ride roughshod over treaties, and had to forget rights and obligations and deny validity to undertakings most solemnly entered into

[1] *Lord Curzon in India*, p. 227.

[2] *Imperial Gazetteer*, vol. iv. p. 82.

in the hour of her need. Rights and prerogatives never claimed by the Company and never conceded by the Indian Rulers have been exercised on the general claim of succession to the Moghul pretensions. The list of obligations which, irrespective of their treaties, has, says Lee Warner, devolved on the States through the channel of royal prerogative, includes the right of the Queen's Viceroy to recognise successions, to assume the guardianship of minor princes, to confer or withdraw titles, decorations and salutes, to sanction the acceptance of foreign orders, to grant passports and to recognise or appoint consular officers. Those encroachments on the legitimate rights of Indian States, based on the theory of the British Crown being the apostolic successor or testamentary heir of the Moghuls, constitute the chief characteristics of the relations between Indian States and the Empire during the period after the Mutiny. In the succeeding chapters we shall study their growth in all its aspects.

This much must be noted here. The 'feudatory' character of the States was emphasised by various Viceroys. The policy of Imperial Durbars inaugurated by Lord Lytton was continued by Lord Curzon and Lord Hardinge, and on each of these occasions emphasis was laid on the allegiance to the British Crown which is demanded of the Indian Rulers. That the chiefs and rulers whose States are derived from the grants of the British Government owe allegiance to the Crown may perhaps be accepted without argument, but, as has been pointed out, they stand on a different footing from the rulers with whom the Company had direct treaties of reciprocal alliance, like Gwalior, Hyderabad and Travancore. The tendency, however, has been to forget their essential difference and to establish a uniformity of political practice which classed the descendant of Asaf Jah with that of Amir Khan, and Scindia with the petty chief of a few square miles in Kathiawad.

This policy of assuming rights over the States and the

conversion of their rulers from semi-independent allies to feudatories, definitely failed in the case of Nepal and Afghanistan. In 1877 the Amir of Afghanistan and the Prime Minister of Nepal were invited to the Durbar, and both politely declined the invitation. Sir James Stephen, who was law member in the Viceroy's Cabinet, wrote that ' Chiefs like the Amir of Kabul must be dealt with on the understanding that they occupy a distinctly inferior position.' Till 1919 there was an attempt to treat Afghanistan as a native State in an inferior grade of relationship. Afghanistan was allowed to have a representative at the Viceregal Court alone, and its ruler was not styled ' His Majesty,' and by arrangement with Russia its foreign relations were to be conducted through the Indian Foreign Office. The case of Nepal was similar. Ever since the Treaty of Sagauli, 1816, a British Resident lived at Khatamandu, but the sagacious policy of the Prime Ministerial family steadily resisted the attempted inclusion of Nepal in the British political system. Nepal is now recognised as a completely independent sovereign State, and the Resident has been transformed into the British Envoy to the Court of His Majesty the King of Nepal.

If this policy of absorption has failed in relation to Afghanistan and Nepal, it has been successful in all other directions. Kashmir was brought definitely within the system, and the Khan of Khelat lost his independence and became a protected ruler. On the frontier tribal chieftains are now being converted by slow degrees into territorial rulers with salutes, orders and dignitaries, and a new province with a number of princes like the Nawab of Dir has been created. Elsewhere there was no increase in the number of States, with the single and significant exception of the Maharajah of Benares, whose ruling powers were restored to him over his family domains, perhaps as a tardy compensation for the historic wrong done by Hastings to Chet Singh.

But other changes of an important constitutional char-

acter, showing that the relations between the States and the Government are still undergoing change, have taken place during the last thirteen years. The delegation of an Indian ruler to represent the Princes at the peace negotiations, the constitution of the Princes' Chamber, the representation of the Princes at the Imperial Conference, and more than all, the declared policy of the Government to surrender some of the rights that it had so far claimed, are evidences of an unseen revolution in political relations, the facts, tendencies, and implications whereof deserve thorough study.

IV

THE GROWTH OF CENTRAL POWER

THE encroachment of a strong central power over the rights of those in loose alliance with it is one of the most fundamental facts in the history of states. The tendency of the major partner to swallow by slow degrees its minor associates and allies is writ large wherever federalism or even confederacy has been tried. The Confederacy of Delos was transformed in course of time into the Athenian Empire. When in face of the Persian army united resistance on the part of the minor Greek states was first organised under the leadership of Athens, the principle adopted was one of equality of status among the constituent members. But the alliance was turned into an Empire, and Athens became the ' paramount power ' in the language of Anglo-Indian historians, and the cities and states in alliance became subordinate associates. The following description by a learned historian of Greece shows the change that came over the political system that started, like the British Indian Empire in its relations with Indian States, through military alliances, and ended in the establishment of sovereignty. ' There was no hard and fast system. Each city had its own individual arrangement, its own measure of restricted autonomy. The closer dependence of these tributary States on Athens was in many cases marked by the presence of Athenian civil officers. But there was one obligation which was common to all, the obligation of furnishing soldiers to the league in time of war.' [1]

[1] Bury, *History of Greece*, Macmillan, 1902, p. 339.

The same tendency is illustrated in the constitutional relations between England and Scotland. The Treaty of Union of 1707 which created the kingdom of Great Britain, guaranteed for the northern kingdom certain definite rights and privileges, some of which have now disappeared. Scotland has preserved the identity of her national existence in some ways, but the encroachments of the central government have been well marked and important.

The tendency of central authority to expand at the expense of its constituent members is perhaps best illustrated in the history of the United States of America. It is well known that when the Federal State was first constituted the thirteen States that signed the Union considered themselves entirely independent of each other, except for the purposes specifically laid down. Jefferson desired to confine federal action to the conduct of foreign affairs, and even Hamilton, of whom it was said by Talleyrand that, having never seen Europe, he had divined it, did not seek its indefinite expansion. All the great institutions of the United States, especially the Senate and the Federal Court, are constituted with a view to maintain the independence of the States and guarantee them from the encroachment of central power. And yet, what has been the result? During the course of the half-century that followed the death of Jefferson, the independent and co-ordinate power of the States was practically annihilated, and the authority of the central government extended on all sides. It was also discovered, says the historian of American democracy, 'that there are unforeseen directions, such as questions relating to banking, currency, internal communications, through which the federal power can strengthen its hold on the nation.'[1]

The same tendencies are to be observed in the case of Germany, and, perhaps, in a more accentuated form. When the Reich was founded the greatest care was taken to maintain intact the sovereign power of some of the

[1] Bryce, *American Commonwealth*, vol. ii. p. 8.

chief States, for nowhere was particularism more strongly marked or enshrined in hoary traditions of dynastic history than in the territories ruled by the Wittelsbachs. Many of the important features of the constitution that Bismarck framed were intended to make Bavaria, Saxony and other independent States feel that in finding a greater unity they were not losing their own independence. But how has this constitution worked? As Treitschke points out, the Imperial constitution soon showed itself to be unitary in all but name. The criminal law of the Empire has been made uniform and enforced under the authority of the central government. All German troops swear allegiance to the Reich, and railway management, posts and telegraphs and communications bearing on Imperial defence are vested in the Bundesrath. Since the War the authority of the central government has advanced much further as dynastic particularism has vanished, at least, for the time.

In India the assertion of central authority over the States has in some degree been more marked, and has shown a tendency on the part of the Imperial authorities to decide doubtful points in their own favour. The main lines on which this authority advanced without being noticed by the public were in the railway, postal and telegraphic systems, educational policy as controlled by universities, extra-territorial jurisdiction as regards Europeans, the displacement of separate coinage and the vague assumption of legal claims about deposition, sanction for succession, right to give titles, etc. In every new development, either in transport facilities, banking, or military services, the vigilant British Government put forward its own claims, which the Princes, being unable to discuss or to come to an agreement among themselves, were incapable of resisting. Lord Chelmsford himself, in his speech to the Princes' Conference, declared:

> There is no doubt that with the growth of new conditions and the unification of India under the British power, political doctrines have constantly developed. In the case of extra-territorial juris-

diction, railway and telegraph construction, limitation of armaments, coinage, currency and opium policy and the administration of cantonments, to give some of the more salient instances, the relations between the States and the Imperial Government have been changed. The change, however, has come about in the interests of India as a whole.... We cannot deny, however, that the Treaty position has been affected and that a body of usages in some cases arbitrary, but always benevolent, has come into being.[1]

The legal bases of the policy of encroachment, which has converted the Indian States into an integral part of the imperial polity, have been, mainly, the claims of paramountcy, royal prerogatives, implications of treaty rights and strategical considerations. Besides these the Government has enunciated and carried out a policy of direct intervention in the States on any and every matter on the claim that the protection which the Government affords entitles it, whatever the clauses of treaties may be, to guarantee the people of the States a minimum of good government. This very principle had been repudiated with emphasis by Lord Dalhousie himself. In a memorable despatch to the Resident at Hyderabad, the Governor-General explained his views on paramountcy in the following terms :

Again, it is often maintained that such is the misgovernment of His Highness the Nizam, that so great are the violence and lawless confusion which pervade every part of his dominions, that it has become the moral duty of the British Government as the paramount power in India to assume to itself the Government of His Highness' dominions in order to correct the evils of his rule and to rescue his subjects from the sufferings which are alleged to proceed therefrom.

I desire to repudiate all adhesion to a doctrine which leads in my humble judgment to a system of unwarranted and officious meddling.

In too many instances, I fear, it proceeds not from sentiments of enlarged benevolence but from the promptings of ambitious greed. Even where the motive from which it springs is pure and sincere, the doctrine is, in my view, not the less unsound. The

[1] *Lord Chelmsford's Speeches*, vol. ii. p. 278.

acknowledged supremacy of the British power in India gives to it the right, and imposes upon it the duty, of maintaining by its influence and (if need be) compelling by its strength the continuance of general peace. It entitles it to interfere in the administration of Native Princes if their administration tends unquestionably to the injury of the subjects or of the allies of the British Government.

But I recognise no mission confided to the British Government which imposes on it the obligation or can confer upon it the right of deciding authoritatively on the existence of native independent sovereignties and of arbitrarily setting them aside, whenever their administration may not accord with its own views, and although their acts in no way affect the interests or security of itself and its allies.

Still less can I recognise any such property in the acknowledged supremacy of the British Government in India as can justify its ruler in disregarding the positive obligations of international contracts, in order to obtrude on Native Princes and their people a system of subversive interference which is unwelcome alike to people and Prince.

But in the period that followed the Mutiny this theory of paramountcy became a well-established fact. A comprehensive definition of this theory of the powers of the Central Government is contained in Lord Reading's famous letter to the Nizam, dated as late as March 22, 1926:

The sovereignty of the Crown is supreme in India.... Its supremacy is not based only upon treaties and engagements but exists independently of them, and quite apart from its prerogative in matters relating to foreign power and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements, to preserve peace and good order throughout India. The consequences that follow are so well known and so clearly apply no less to your Exalted Highness than to other rulers that it seems hardly necessary to point them out. But if illustrations are necessary, I would remind your Exalted Highness that the Ruler of Hyderabad along with other rulers received in 1862 a *sanad* declaratory of the British Government's desire for the perpetuation of his house and government subject to continued loyalty to the Crown; that no succession to the *musnad* of Hyderabad is valid unless it is recognised by H.M. the

King Emperor; and that the British Government is the only arbiter in case of disputed succession.

The right of the British Government to intervene in internal affairs of Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown.... Where Imperial interests are concerned or the general welfare of the people of a State is seriously and grievously affected by the action of its government it is with the paramount power that the ultimate necessity for taking remedial action, if necessary, must lie.'

The process by which this extraordinary transformation took place is worth examination. The new government of the Crown, which came into existence as a result of the Mutiny, brought with it new problems. They were mainly the problems of consolidation. For this work the agents of the Crown found ready at hand a most useful weapon in the claims that the Residents had voiced even in the days of Dalhousie. The Princes of India had not agreed by any of their treaties to vest in the Crown any powers other than those which they expressly surrendered. Therefore the paramountcy that the Crown could legitimately have claimed was merely a status, and not a political principle giving rise to economic or political rights. But to status was added the consciousness of undoubted political power, and out of these two was evolved the all-embracing doctrine the essence of which was that the States could be forced to follow any course of policy decided upon by the Government of India. It was held that paramountcy implied the obligation on the part of the Indian States to obey all lawful orders,[1] and that it gave the Crown the right to intervene in the affairs of the States.[2] On the basis of this claim the Government of India required the submission of the States to their orders on questions of policy. A few illustrations are given below to show the extent and variety of the measures enforced in the name of paramountcy.

[1] *Manipur Resolutions*, No. 1098 of 1893.

[2] *Orders of the Baroda Case*, 1875.

(*a*) In 1880 the State of Cutch, then administered by a Regency, having raised objections to the control of salt production by the Government of India, was told by the Political Agent: 'I am directed to inform you that the Government has been pleased to instruct me to *carry out forthwith* the salt arrangements proposed by Mr. Carey and myself *which you and other members of the Council of Regency refused to adopt.*' The State was in this case compelled by the use of paramountcy to surrender its rights.

(*b*) When the Patiala Government could not be persuaded to surrender its jurisdiction over the railway lines, the Lieutenant-Governor informed the Maharajah that 'upon a full review of the case the Government of India have come to the conclusion that, for Imperial reasons which apply throughout India, it is necessary that the Patiala Durbar should comply with the wishes of the Government.... His Honour must therefore ask the Patiala Durbar now to carry out the request and return duly two signed copies of the agreement.'

(*c*) When in 1866 the Government of Bhopal appealed against the exercise of jurisdiction by the Resident, it was told that it was '*expected to accept arrangements of that nature.*'

(*d*) When the Travancore Government refused to sign the inter-portal convention by which its right to the sea customs was seriously curtailed, the Resident officially gave the 'advice,' which was a command, that it should be signed by the State.

From this claim to force the States to follow against their own interests the line of policy decided upon by the British Indian Government it is but an easy transition to the theory, officially put forward in the letter to the Nizam, that paramountcy exists independently of the treaties, and that it is a part of the right and duty of the British Government to preserve peace and good order throughout India. The view of the Butler Committee that paramountcy is a living and growing relationship is

but a natural corollary to the view stated by Lord Reading. It may be, indeed it must be, that the relationship of the States with the Paramount Power is a living, growing relationship, but it is clear that both the life and growth of this relationship can be based only on the treaties which bind the Crown to the States. The life must originate in the treaties ; the growth must be conditioned by them. Otherwise, the treaties would have no meaning and paramountcy would displace the most solemn obligations created by agreement.

The true view of paramountcy is that it is only a complex of rights and obligations, differing with each State, which flow from the treaty with that State. It is true that with regard to all the States there is a right to intervene in case of gross misgovernment, to conduct foreign relations and to take measures to protect them from external aggression. But this means only that these rights are derivable from every treaty. It does not and cannot mean that the right of paramountcy is a discretionary power accruing from all the treaties. It is a varying fact with each State.

But it is not in this manner that paramountcy has been interpreted by the Agents of the Crown. The Government of India have used it, as the Butler Committee freely accept, as an instrument for the unification of India. That, no doubt, has been a result, but the immediate purpose in every case has been, not the achievement of Indian unity but the subordination of the States and their interests to the views and policies of the Government of India. Instances may be quoted from almost every State in India to show that the legitimate objections of the States to lines of policy already decided upon by the Government of India have been over-ruled for the sake of the financial interests of British India.

Especially have the States suffered in the past from the wide connotation of paramountcy in the economic sphere. In aid of, or to promote, the financial interests of the Government of India the States have been forced on

numerous occasions, on the plea of paramountcy, to submit to encroachments upon their natural and valuable rights.

But it must be frankly admitted that though the object and the method were perhaps alike open to numerous objections, India as a whole has benefited, to some extent directly and to a large extent indirectly, by this vigorous assertion of central authority. The most important result is that a central authority, a suzerain power, having effective sway over the whole of India, has come to be recognised without question. Although on a strict interpretation of many treaties, there is neither suzerainty nor paramountcy vested in the British Government, that position has now totally disappeared. Whether paramountcy is merely a status, and not a source of political power or a growing prerogative of the central government which exists independently of treaties, it is a capital fact in the political relationship of the Crown with the State, which the Princes gladly acknowledge and willingly accept. The acceptance of this principle has converted India from a conglomeration of independent States, dominated by one among them, to a single entity.

Though in theory the rights of the States remain to-day what they were when the States entered into treaties with the British Government, except for the limitations laid down in the treaties themselves,[1] there is no doubt that the powers actually enjoyed by the States have been greatly curtailed. This, as we have seen, is to some extent due to the operation of the theory of paramountcy. But apart from the conscious process of political encroachment followed by the British Government, with a view to the political and economic consolidation of India, there have been numerous other causes which in the totality of their effects have inevitably tended to reduce the authority and political independence of the States.

The causes which gave rise to this imperceptible en-

[1] This view is stated with force in the legal opinion of Sir Leslie Scott and others. See Appendix to the *Butler Report*.

croachment on the authority of the States may be analysed under the following heads :

(1) The geographical unification of India following on the construction of the main lines of railways, posts and telegraphs, etc.

(2) The political unification of India by the growth of (*a*) an imperial administrative machinery, (*b*) the creation of legislative institutions, (*c*) the great legal codes.

(3) The development of economic unity : by the growth of industrialism, banking systems and the wide international importance of trade, currency, etc.

(4) The growth of national feeling, due to (*a*) the idea of Indian citizenship, (*b*) the influence of newspapers, (*c*) universities.

These developments were inevitable, and each of these has materially affected the position of the Indian States. Even without too wide an interpretation of paramountcy, the position of the States was bound to undergo alteration, for the forward march of these gathering forces could not be resisted either by theories or by treaties.

The geographical unification of the country made the States lose their sense of difference from the rest of India. Even a State like Kashmir, ensconced as it is in the impenetrable ranges of the Himalayas, became easily accessible by motor and was brought under the influence of British Indian ideas and movements. So far as the vast majority of Indian States are concerned, they became effectively parts of a united India. Whatever geographical peculiarity there was in the States became merged in the vast new entity which we now know as India. It is this *fact of unification* that found formal expression in the General Clauses Act (Act 1 of 1868) which introduced the term ' British India ' and confined it to the territories directly under the sovereignty of the Crown, reserving the wider word ' India ' by implication for the whole, whether directly governed by, or only under the political control of, the Crown. The railways, posts, telegraphs, trunk roads, etc., so effectively knit

India together as to create one country out of a sub-continent. In consequence, the States tended more and more to become autonomous political communities rather than territorial units having their own individual peculiarities.

The political consolidation of India following the Mutiny had a similar effect. The development of a great centralised administrative edifice with its ramifications spreading all over India brought the States more closely into the British system. All-India administrative services meant all-India policies, and the States were unconsciously brought under the operation of these policies conceived on an all-India basis. We shall see later how the policy of salt and opium monopoly effected a great inroad into the rights of the States. Here it is sufficient to note that the necessity for a common policy in matters of famine, irrigation, forest development, etc., naturally affected the States, and brought them more and more within the spheres of British administrative supervision.

The effect of the great legal codes and the establishment of British Indian High Courts was slightly different. Immediately following the enactment of the Criminal Procedure Code, British jurisdiction with regard to the trial of Europeans was extended into the States. The period between 1862 and 1869 saw the enforcement of the principle that the sole authority for the trial of Europeans accused of crime in Indian States rested with the British Indian judiciary. The Government of India Act 1865 (28 and 29 Vict. c. 17, Section 1) gives the power to the Indian Legislative Council to make laws and regulations for *all British subjects* of His Majesty within the dominions of the Princes and States whether in the service of the Government of India or otherwise.

The establishment of a legislature in India also had a far-reaching effect on the States. It should be remembered that originally the Indian Legislative Council was only the Executive Council of the Viceroy sitting with additional members for legislative purposes. It was

therefore not considered improper to nominate Princes and their Dewans to the Councils. When the Council came to contain an elected element after the Minto-Morley Reforms, it naturally claimed to have all the legislative powers of the Government of India. Even after the Act of 1919 expressly excluded the relations of the Government of India with the States from the purview of the Legislature, there have been numerous encroachments by legislation on the economic and political rights of the States. The policy of protective tariffs to which the Government of India committed itself as a result of the pressure of the Legislative Assembly affected the Indian States vitally. The Steel Protection Act and the protective duties recently imposed on cotton goods are two important legislative enactments of a fiscal nature which tax the States heavily. The effect of these and other measures on the economic life of the States is reserved for consideration in another chapter.

The development of economic unity was in part the cause and in part the result of the political and administrative tendencies discussed above. A powerful industrial system has developed in India, the centres of which are Bombay, Ahmedabad, Cawnpore and Calcutta. The economic life of the surrounding districts, whether parts of British India or Indian States, are naturally dependent upon these centres. The Indian States have practically no direct access to large industrial centres for the sale of their raw products, whether such industrial centres be in India, Great Britain, Japan or America. The fact that the agencies of import and export trade, banks, railways and shipping are in British hands, and that the foreign trade of India, whether it comes from the States or from British India, must pass through British Indian ports, makes the economic dependence of the States every day more and more pronounced. The wide international importance of a currency which has for all practical purposes of trade become unified under British control is another factor which adversely affects the position of the States

as independent units. The British rupee has penetrated the entire length and breadth of India, displacing local coinage and, even where this exists, becoming the sole medium of external trade. The banking system, controlled from British India and developing according to British Indian needs, has also powerfully affected the position of the Native Rulers and the States. An example may be given. The Rulers invest their funds mostly in the Imperial Bank of India. Though the funds are State funds and not the private property of the Rulers, the Banks insist on stamp fees in the case of succession to the *gadi* and the consequent transfer of accounts to the new ruler's name.

The rapid growth of national feeling has had a direct effect on the position of the States. The subjects of Indian Rulers naturally feel an identity of interest with British Indians, and the divisions of political allegiance are forgotten by the people in the fight for freedom or tend to be obliterated by the strong current of social and national forces working towards unity. No effective barriers can be erected against ideas penetrating political communities, especially when, as in the case of the Indian States, they are but creations of historical accident. The result is that in its essence the national movement is Indian and not British Indian. This is due not merely to the feeling of sympathy that the subjects of the States have with that movement as Indians, but to the conviction that the problem of their own political rights is but a minor phase of the fight for freedom in British India. This is in one sense true. If an Indian ruler to-day decided to establish constitutional government in his State, he would find that the paramountcy of the British Government stands as an insuperable objection. If a legislature is given all the powers which nominally exist in the Ruler, it will become vested with the full sovereignty of the State, and automatically the limitations which are now accepted by the Princes as a result of political practice would be scrapped. It is indeed obvious that in the ultimate

analysis the powers of a Ruler can be exercised by the Government of India; but a legislature cannot be deposed or placed under tutelage. The result is that the Government of India can at no time permit the institution of a complete system of responsible government within the States, because to do so would be to give full rein to the centrifugal forces inherent in every autonomous political body. To permit each State to have unrestricted government without reserving the authority of the Central Government would in effect be to undo the whole process of unification. The subjects of the States therefore realise that the solution of their own problem is dependent on the national movement of India.

The subjects of the States are thus profoundly affected by the national movement. They have joined hands with the people of British India, though the extent of this co-operation is not known. Many of the best known leaders of the national movement, such as Mr. Gandhi, Mrs. Naidu, Mr. Kelkar and M. Mahommed Ali, to mention only a few, are subjects of the States. The Indian National Congress recognises this political unity, and its territorial organisation makes no difference between British India and the States. The Congress provinces include the States, and at least the Madras States and Mysore have their own Congress Committees which elect representatives to the Congress. The influence of British Indian leaders in the States is also a fact of significance which cannot be overlooked. It is true that most of the leading British Indian politicians have expressed the view that political activities within the States are outside their sphere; but who can deny the power they exercise over the masses?

A direct effect of the national movement has been the organisation of the States' Peoples' Conference. A common organisation for the peoples of the Indian States involves the fundamental implication that the States are not separate sovereignties, but a part of the Indian Empire, governed, it is true, by their own rulers, but

effectively under the common authority of a supreme government. It is on this assumption that the organisers of the movement have proceeded; and it is this assumption that the Rulers have vigorously contested. The Maharajah of Bikanir, especially, has in numerous speeches challenged this point of view and asserted the counter-proposition that no Ruler can take cognisance of the views of a body representing the subjects of different States, and that the only legitimate course open to the subjects of the States is to organise separately in each State for the acquisition of their political rights. Constitutionally and legally this point of view is right and cannot be refuted, but the logic of Indian political development argues in favour of the Peoples' organisation. The movement is no doubt in part the outcome of hostility towards the Rulers and their system of government; that is but the most obvious and the least important aspect of it. In essence it is the assertion of the feeling of a common Indian citizenship, and it is this fact that cements together the subjects of Travancore, Kashmir, Hyderabad and Bikanir into one political organisation.

The idea of an Indian citizenship irrespective of political allegiance has also grown of late, as a result of the very large number of people who emigrate to or travel in foreign countries. There are over two thousand five hundred Indian students who are studying in Europe. There is a very large Indian population settled in the African Colonies of Great Britain, in Fiji and the West Indies. This large community is not drawn exclusively from British India. Moreover, since outside the boundaries of India the subjects of Indian Rulers and British Indians are alike treated as Indians and suffer from the same disabilities, the division of political allegiance is forgotten. Especially is this the case with the large number of students who return every year from Europe. The growth of this idea of Indian citizenship among the younger generation has naturally weakened the intense

personal loyalty which the subjects of the States now feel towards their rulers.

Another factor of great importance tending to undermine the authority of the Princes and to create a feeling of All-India solidarity is the Press of British India. Of recent years the Indian Press has become a great organ of public opinion. The subjects of Indian States equally with the British Indians come under its influence. Whether the Press fights in favour of the Princes or whether its activities are directed against them, the important point to remember is that opinion in the States is influenced and developed through British Indian agencies. It is the British Indian Press that deals out praise or blame, that reviews the administration reports and ventilates the grievances of the Princes, and it is but a bare statement of fact to say that the administrations of States have one eye fixed on the public of British India, and only the other is turned to the public of their own State. When a Ruler addresses his own people he is in fact addressing the public in British India and replying to their criticisms; when he initiates some great reform, it is often with a view to the effect of such a policy in British India as much as for the benefit of his own subjects.

It is these forces, unseen but not unfelt, that, more than even the claim of paramountcy, have affected the authority of the Rulers and the sovereignty of the States. Paramountcy has been a method by which the executive of British India has aggrandised itself at the expense of the States. The social, economic and political forces discussed above are the factors that have given life to the theory of paramountcy and converted its encroachment from unjustifiable usurpations, which they are from the point of view of law, into the operation of political forces directed towards the unification of India.

V

THE WORKING OF PARAMOUNTCY

EVEN before the Company was formally dissolved and the Crown undertook the direct government of India, there had developed in the relations between the Government of India and the States certain definite rights to control the affairs of the States. The statesmen of the Company made, however, a clear distinction between the dependent vassal States and the independent Treaty States.

Wellesley recognised this difference in his despatch justifying the treaty with the restored family of Mysore. In 1837, Sir Charles Metcalfe emphasised this distinction, and the whole of the Marquis of Dalhousie's policy was based on it. Dalhousie claimed that the Crown had feudal rights over those petty principalities, like Satara, Jhansi and others, which had been created by the Company and stood on a different footing from the States like Hyderabad, Gwalior and Travancore, which had definite treaty relations. In regard to these others, even Dalhousie put forward no pretensions of paramountcy, and authoritatively disclaimed any intention to intervene in their affairs. His doctrine of lapse, escheat and other claims involving sovereign rights on the part of the Company affected only those petty principalities which could not, either historically or by virtue of authority enjoyed, claim to be more than feudatories. Over these the sovereignty of the British power was asserted. An attempt was even made to extend the theory by claiming the right to refuse recognition to adoptions, and to depose Rulers and to confiscate their States. But both

the Court of Directors and the Marquis of Dalhousie emphasised the distinction between the States which were independent and those which were vassal. Sir William Wilson Hunter, after 'carefully reading the official correspondence,' states :

> Practically, Lord Dalhousie classified the native states of India into two divisions. First, the sovereign or quasi-sovereign states, dating from the time of the Moghul Empire, or from a still earlier period, or from the period immediately following its dissolution. Second, the dependent native states which we had ourselves created in subordinate relations to the British Government. The first class included not only the great Mahommedan, Rajput and Mahratta States, but also in Lord Dalhousie's opinion states of small area if they had any claim of antiquity in favour of their semi-independence.

This useful, and indeed historical, distinction was, however, forgotten in the search for uniformity of practice. Lord Curzon declared that the Indian States represent 'a series of relationships that have grown up between the Crown and the Indian Princes under widely differing historical conditions, but which in process of time have conformed to a certain type.'[1] Lord Chelmsford frankly admitted that 'practice appropriate in the case of lesser chiefs was inadvertently applied to the greater ones also.'

The rights claimed by the Government, but never fully accepted by the States, on the basis of paramountcy, are what may be conveniently called suzerain rights, for lack of a more exact term. They involve the right to settle succession, constitute regency, decree deposition, assume wardship (involving education), recognise, limit and grant titles and permit adoption. In the case of dependent States the East India Company enforced every one of these, and the discontent created by their application was one of the undoubted causes of the Great Rebellion.

The question of settling successions is one that is bound up historically with the growth of the East India

[1] *Lord Curzon in India*, p. 227.

Company. The first political interference of the Company in Arcot was in a dispute regarding succession, and Mahommed Ali assumed the Suba with the permission and under the patronage of the Company. In Oudh, Sir John Shore, who claimed to adhere strictly to the principle of non-intervention, exercised the right of deciding who was the lawful heir, as Warren Hastings and his Council had done before him. Even in the case of the Mahrattas, the cause of the series of wars with the Peishwa up to the Treaty of Bassein was the question of the succession of Raghoba. In 1803, Secunder Jah's succession was formally confirmed by the Emperor of Delhi and the Company, and later on the Crown, as the pretended inheritor of the Moghul traditions, claimed and enforced this right.

It must, however, be recognised that the policy of the Government of India in this matter has not been uniform. With regard to the larger and fully-powered States, the earlier practice was to leave to the ruler the full authority to determine succession. In 1826, when Dowlut Rao Scindia was lying ill, the Government of India urged him to adopt a successor, and wrote that 'nothing could be further from the wish and intention of the British Government than to exercise, now and hereafter, any intervention in the internal administration of his (Scindia's) country, that it did not pretend to any right to control or regulate succession to the State of Gwalior, and that the Maharajah as the absolute ruler of the country should be considered to possess the undoubted right of determining the succession.'[1] The right to intervene in the case of Princes set up by the British Government and standing in clearly subordinate relation to it was asserted by Sir Charles Metcalfe in 1837 on the application of the Rajah of Orcha for the recognition of his adopted heir. 'There is a wide difference in the disposal of the question between sovereign Princes and *jagirdars*, between those in possession of

[1] See again the Bhawalpur Case, p. 398, Aitchison, vol. viii.

hereditary sovereignty in their own right and those who hold by grant from a sovereign, a paramount power.'

In the despatch of the Secretary of State dated July 24, 1891, the Cabinet of the Marquis of Salisbury laid it down that ' it is admittedly the right and duty of Government to settle successions in protected States of India generally.' The Government of India, in a communication to the Home Government, had also laid it down as a principle fully understood and invariably applied to India, ' that every succession must be recognised by the British Government and no succession is valid until such consent has been given.' In a letter addressed to the Chief Commissioner of the Central Provinces and published in the Government of India *Gazette*, it was laid down : ' I am to observe that succession to a native State is invalid until it receives in some form the sanction of the British authorities. Consequently, an *ad interim* and unauthorised ceremony carried out by the people of the State, cannot be recognised.'

Closely connected with this right of confirming succession is the claim to permit or disallow adoption. The doctrine of lapse, based on the right of the Paramount Power to refuse permission to the adopted son to succeed to the public position, as opposed to the private properties, of the ruler, has now been repudiated by the Government. But even when it was enforced the Company was careful to distinguish between dependent and independent rulers, and to claim the right only as against the former. The most important cases are those of Satara and Jhansi. Both of these, though principalities of importance, were the creations of the Company, and as such had no definite and specific rights on a reciprocal basis, though there is no doubt that their annexation was based on the principle ' of abandoning no just or honourable accession of territory.' The doctrine of lapse, as applied by the Marquis of Dalhousie, affected only the petty States. In fact, in the case of Indore, when Hari Rao Holkar died in 1843, after a period of miserable mis-

government which roused against him the fury of his own subjects, his mother was permitted to adopt a successor. Between 1826 and 1848 there were no less than fifteen cases of succession by adoption. In Indore, Datia, Orcha, Kotah, Udaipur and twice in Dharangpur, the rulers were allowed to adopt, and in Dhar, Kishengarh, Karauli, Banswada, and twice in Gwalior and twice in Indore, the Ranis were allowed to adopt a successor.

But the right of adoption, which the Court of Directors in 1834 had instructed their Governor-General should be given only as an exception ' and should never be granted but as a special matter of favour and approbation,' was after the Mutiny recognised as the inherent right of all Indian Rulers.

> Her Majesty being desirous that the government of the several princes and chiefs of India who now govern their own territories should be perpetuated and that the representation and dignity of their houses should be continued, I hereby in fulfilment of that desire convey to you the assurance that, on failure of natural heirs, the adoption by yourself and the future rulers of your State of a successor according to Hindu Law and the custom of your race, will be recognised and confirmed. Be assured that nothing shall disturb the engagement just made to you as long as your house is loyal to the Crown and faithful to the treaties, grants and engagements which record its obligations to British India.

The new principles of loyalty and one-sided obligation imported into this will be discussed later. But this *sanad* closed a chapter which was full of bitterness and mistrust, and inaugurated a new era of relationship between the States and the Crown. There has been since then no case of an adoption being refused, or of the rights of adopted sons to succeed, in the case of failure of natural heirs, being questioned.

The claim of the Government of India to *regulate* succession in a sense going beyond its rights of recognition, has been denied by Indian States. In the case of natural heirs, the right of succession cannot be denied ;

though as Paramount Power the Government of India has the right of intervening where the natural heir is disqualified by madness or proved open disloyalty. The only case of such intervention was in Manipur. The *Yuv Raj*, or heir-apparent, who headed a disloyal conspiracy against the Maharajah, was proceeded against. On one occasion, too, the heir apparent of Cochin was publicly warned by the Resident [1] that if he persisted in certain objectionable courses of action his right of succession would be cancelled.

The right claimed by the Government of India to *sanction* succession and the open declaration that without such sanction no accession to the *gadi* of an Indian State would be valid, raised much bitterness among the Princes. When, during the viceroyalty of Lord Chelmsford, the Princes were called in conference for the first time, for the discussion of their common problems, this was almost the first subject taken up. The Princes there assembled questioned the authority which the Government of India had assumed beyond the terms of treaties, and held that in the case of well-defined succession from father to son or of natural heirs, the Government of India should merely accord its recognition to the new Ruler and not sanction his succession to the *gadi*. This principle was accepted.

In cases of disputed succession, the right of the British Government to intervene and to decide is not denied. When the adoption has not been made in public, or when the Ruler dies suddenly without making provision for the succession, the right of the Paramount Power to intervene cannot be questioned. The British Government has also the obligation to maintain the rights of those whose claim to succeed the Ruler desires unjustly to pass over. The case of Kashmir is in point. The Kashmir State was given to Maharajah Gulab Singh and the ' heirs male of his body ' : that is, by the treaty which gave the sovereignty of Kashmir to the present house the right of succession, failing an heir by primo-

[1] C. Atchuta Menon, *Dewan Sankunni Menon*, p. 56.

geniture, is vested in the nearest male descendant of Maharajah Gulab Singh ; and Rajah Hari Singh was the person thus qualified. The desire of the late Maharajah was to see his adopted son, the Raj-kumar Jagatdev Singh of Poonch, succeed to the *gadi* in supersession of the legal claim of Rajah Hari Singh, which is guaranteed in the treaty. The British Government had therefore every right to insist on the succession being in strict accordance with the dynastic law as settled by the treaty.

Nor can the rights of the Paramount Power to ensure that the usages and customs governing succession shall be respected be denied. The succession law in Indian States is as various as can be imagined. In Travancore and Cochin succession is governed by matrilineal descent; the oldest living male member succeeds, the descent being counted through the female side.

Another right which the Government of India and its champions have claimed is that of nominating regencies and setting up minority administrations. Lord Mayo [1] laid it down as a policy to set up regency administration whenever an opportunity arose, and to use the occasion to push British claims and to establish new rights and precedents. It was one of the tendencies of the new policy inaugurated by that Viceroy that, even better than annexation, is a regency under a British official. The right to constitute a regency was exercised by him not only when the ruler happened to be a minor. In the case of Alwar, the Maharajah was practically deposed for maladministration, and a council of regency was set up in 1870. In Gwalior a regency was set up in 1886, which, though under its own officials, was to carry on the administration with the sanction of the British Resident. The administration of Kotah in 1876 was carried on by a British political agent.

This right of nominating regents and setting up minority administrations has been claimed and exercised by the British Government as a part of its paramountcy.

[1] *The Earl of Mayo*, Hunter, Oxford, 1891, pp. 104-5.

Whatever may be the obligations of the dependent principalities, such a claim is not accepted by the Treaty States. The Princes have steadily protested against such usurpation of sovereign rights. One of the main demands of the Chamber of Princes was that the practice on this matter should be defined. The exercise of British authority during minority administrations has in the past been in many cases unconscionable. Many States were forced to surrender valuable rights when the rulers were either not of age or not in a position to defend their rights, and administrators nominated by the Government of India signed away the rights of the States for the benefit of British India. It is these undoubted facts that gave weight to the complaint of the Princes regarding minority administrations nominated by the Government of India. As a result of the attitude taken up by the Princes the Government issued a Resolution which enunciated in clear terms the principles of minority administration.

In that Resolution (No. 1894, 1A, dated August 27, 1917) the Government of India stated that they recognised that they 'are the trustees and custodians of the rights, interests and traditions' of the States during a minority administration. The Resolution therefore provided that, during such an administration, the government of the State should be entrusted to a Council of Regency or to a Regent and not to a political officer; that old traditions and customs should be scrupulously observed; that radical changes should be generally avoided; that for appointments in the State local talent should be used; that treaty rights should be strictly upheld; that no *jagirs* should be granted; no State territory should be exchanged, or sold; no long-term commercial concessions or monopolies should be given to individuals or companies.

As a general rule, when a minor Ruler ceases to be a minor, the Government of India interferes to restrict his full powers. In 1895, when the Maharajah of Rewa came to the throne, his criminal powers were restricted. Later

the Political Department wrote : ' I have the honour to inform you that the Government of India having learnt with satisfaction that H.H. the Maharajah has *shown himself fitted for more* extended powers, are pleased on the recommendation of A.G.G., Central India, to *withdraw the temporary restriction.*' Even when Rulers are nominally invested with ' full powers ' the Government of India sometimes restricts by confidential orders the exercise of their sovereignty in important matters. This was done even in the case of so enlightened a Ruler as the reigning Maharajah of Bikanir.

Wardship of minor Princes and control of their education have also been claimed on a feudalist interpretation of mutual obligations. Lord Curzon, speaking at the installation of the Maharajah of Alwar, declared that before entrusting a Maharajah with the administration of the State the British Government must satisfy itself ' that the young chief has received the education and the training . . . that will qualify him to rule over men.' This certainly is a somewhat presumptuous claim. The lack of ' proper ' education cannot take away hereditary right, and the implication of the Viceroy's speech, that if the British Government thinks that the young ' chief ' has not requisite educational accomplishments he may be prevented from succeeding to the *gadi*, is unwarranted.

Besides the important claim of determining succession and the various other rights that follow from it, the British Government has also assumed to itself the authority to depose, dispossess, degrade and punish Indian rulers. The main examples of deposition have been in Mysore, Baroda, Bharatpur, Alwar and Indore. Besides these, there have been forced abdications of political and constitutional importance in Indore, Nabha and Bharatpur. There have also been a number of cases in which without deposition the powers of the Ruler have been so modified as to give all authority to the Regency. The most important cases are those of Shah Jehan, Begum of Bhopal, Maharajah Pratab Singhji of Kashmir and of the

Maharana Fateh Singhji of Udaipur. The cases of deposition of rulers with sovereign rights have been those of Indore and Baroda. In Mysore the treaty which Wellesley made provided for the deposition of the Maharajah and the assumption of territory in certain definite eventualities.

'The Governor-General in Council shall be at liberty,' declared Article IV of the Treaty of Seringapatam, 'and shall have full power and right either to introduce such regulations and ordinances as he shall deem expedient for the internal management and collection of revenues or for the better ordering of any other branch and department of the Government of Mysore; or to assume and bring under direct management of the servants of the said Company *Bahadur* such part or parts of the territorial possessions of H.H. the Maharajah as shall appear to him, the said Governor-General in Council, necessary.' It is under this comprehensive clause that the Maharajah of Mysore was deposed in 1830, and the entire administration transferred into the hands of the British officers.

The case of Baroda was different. It is one of the earlier Treaty States; though the treaty of 1802 required the ruler to listen to advice given for the good of his country. The right of advice and friendly interference was expressly reserved, but the Gaekwar was, according to the assurances of the Bombay Government, to remain unrestricted in internal affairs. The British Government had, therefore, a legal right to advise and intervene, and in the time of Malhar Rao Gaekwar, the Government of India on the grounds of maladministration and court intrigue appointed a Commission of Enquiry, as a result of which the Gaekwar was 'warned.' Two years later a further charge was brought against the Maharajah, viz. of attempting to poison the British Agent. The Gaekwar was arrested on January 13, and the proclamation which the Government issued declared that such an attempt would be a high crime against the Queen. He was tried before a special tribunal consisting of British officers, an

Indian ruler and a high official of an Indian State, Sir Dinkar Rao; and though the court was divided in opinion, the Government deposed him, and his sons were declared precluded from the succession.

This action against the Gaekwar was clearly high-handed and unlawful. Neither by treaty rights nor by recognised claims had the British Government the right of arresting and trying an Indian Ruler. The arrest of the Gaekwar and his open trial[1] before a tribunal constituted flagrant breaches of agreement, and both the Indian people and the Princes resented the proceedings strongly.[2] It was, in fact, with a view to placating the opinion of the Princes that a new policy was inaugurated by the rendition of Mysore. It is significant that though graver cases have arisen, as in the instance of Nabha, neither arrest nor trial of any Indian Prince has since taken place. The Maharajah Ripudaman Singh of Nabha, who had been forced to abdicate in 1922, was on charges of disloyalty and seditious associations forcibly removed to Kodaikanal in February 1928, and placed under restraint. The action taken against the Maharajah only emphasises the point of view taken here.

Veiled depositions in the form of forced abdications have been numerous. The Government has usually interfered in consequence of obvious maladministration, misuse of sovereign powers, or notorious crime. In the case of Indore in 1903, the then Maharajah Holkar was known to have been responsible for serious crimes, and ruling rights were taken away from him. The case of Maharajah Ripudaman Singh of Nabha, referred to above, which is the best known case of this kind, was even more complicated. Charges of three kinds were brought against

[1] 1875.

[2] 'The true value of the Baroda case from the point of view of Indian political law lies in the number and importance of the political principles which it establishes and in the fact that most or all of these principles received the expressed or implied concurrence of several leading chiefs. In the case of a state of the first consequence, and apart altogether from treaty rights, the Government of India . . . suspended and ultimately deposed an erring ruler.' C. L. Tupper, *The Indian Protectorate*, London, 1893, p. 118.

the Maharajah. These were that he violated the sovereignty of the neighbouring State of Patiala by covert and overt acts of aggression, that he utilised the whole machinery of the State and the rights vested in him as ruler for purposes altogether criminal in intention and illegal in execution, and that he was associated with political movements outside his State which aimed at subverting the authority of the British Government. That these offences were of a nature to justify the most drastic action on the part of the Paramount Power is undeniable. But the most important feature of this case is the fact that the Maharajah was neither tried nor deposed, but was given, and exercised, the option of abdicating. The Political Agent as well as the Government of India made it clear that it was only the ' odium of punishing a ruler ' that prevented them from taking more drastic action, a significant enough commentary on the change that has come over the relations between the States and the Government of India since 1875, when a more powerful ruler was openly tried, deposed and exiled.

The resolution of the Political Department on the case of the Maharajah of Nabha sheds considerable light on the policy of veiled depositions.

Of the charge set out in the eight annexures the findings have been against the Nabha Durbar on six. The Ishwar Kaur case (Annexures III) has fallen to the ground, and in the horse case (Annexure IV), the least important of all, the Patiala Durbar have failed to establish that any offence was committed. In one case only (Annexure II) was there a violation of territorial rights, and though the acts of Nabha officials in that case call for censure, they are of little moment when compared with the revelations which have been made in Mr. Justice Stuart's report as a result of his enquiry into the six cases in which he had found against Nabha. Mr. Justice Stuart has in the main dealt with the cases individually, recording separate findings on each. It is left to the Government of India to synthetise the results and to draw its own inferences from the features which the cases possess in common.

The first of those features is, that in all the cases in which the finding of the Special Commissioner is adverse to Nabha, the Nabha story is definitely false. In four of these cases (the cases against Abdul Aziz, Muhammad Yaqub and Abdul Latif, and the Nabha version of the Jiundan incident) the story has been deliberately fabricated by the Nabha police, and in the Pehdani case, it is clear that certain authorities in Nabha have supported a story which is false, though circumstances have prevented their putting the case into their own courts.

The second common feature is, that all the fabrications and falsities have been aimed at one object, the injuring of Patiala. In the cases against Muhammad Yaqub and Abdul Aziz, Patiala officials were the victims. In the case against Abdul Latif the victim was suspected of being a Patiala spy. In the Bugra case an attempt has been made to implicate a Patiala sub-inspector, and in the Jiundun case, if the Nabha version had been believed, it would have meant that a number of Patiala police officers had been guilty of serious offences.

Thirdly, in all the cases in which the Nabha police have brought into the court charges fabricated against persons connected with Patiala, the cases have been prosecuted to conviction in the Nabha courts on evidence which was utterly inadequate and in circumstances which necessarily imply the complicity of judicial officers in the injustice which was perpetrated.

These three features show a deliberate perversion by highly placed officials in the state of the whole machinery for the administration of justice for the purpose of damaging Patiala.

Ever since the Maharajah of Nabha succeeded his father, the Government of India have had abundant evidence that the whole policy of the State has been dominated by his personality, and it is inconceivable that the perversion of justice could have been reduced to a system of offence against Patiala without the Maharajah's full general approval and active countenance. It is not, of course, to be expected that the Patiala Durbar would be able, or the Nabha Durbar willing, to produce specific proofs of this in every individual case. But it has been shown in Abdul Aziz's case that the Maharajah, in spite of having been given ample opportunity of seeing that the wrong was righted, allowed the proceedings to take their course, while in the case of Muhammad Yaqub there is a definite finding that the false story in both its stages was false to the knowledge of the Diwan, and it is safe to assume in such matters that what was known to the Diwan was known to the Maharajah.

The Government of India must express the strongest con-

demnation of the state of affairs which the enquiry has revealed. In the written arguments presented to the Special Commissioner, stress is laid on the independence of the State in its internal affairs. The Durbar have apparently forgotten the *Sanad* of 1860 does not merely confer privileges, but that it also imposes obligations. Under Clause IV, the ruler of Nabha is bound to 'exert himself to every possible means in promoting the welfare of his people and the happiness of his subjects and the redressing of grievances of the oppressed and injured in the proper way.' Clauses V and X 'bind him to loyalty and obedience to the British Crown and the British Government in India.' All these obligations have been broken. The deliberate perversion of justice is a clear breach of Clause IV, the forcible infraction of Patiala's territorial rights is a breach of allegiance to the Crown, and the deliberate orientation of the policy of the Durbar towards the prosecution by force and fraud of the Durbar's own feud with its neighbour is a breach of the spirit of the well-known canon which prohibits hostilities between States.

The Government of India have been unable to trace any instance in the past in which they have been called on to pass orders on a case parallel to the present one, and they cannot conceive any more subtle or insidious form of oppression than the deliberate and methodical perpetration of injustice under cover of legal forms. It is not necessary to record here the measures which the Government of India would have been compelled to take in this case, because, while these measures were under consideration, the Maharajah of Nabha on his own initiative visited the Agent to the Governor-General, Punjab States, at Kasauli, and voluntarily expressed his desire to sever his connection with the administration of the State upon certain conditions. The Governor-General-in-Council has felt some hesitation in accepting this offer; but after careful examination of the circumstances he has come to the conclusion that if certain necessary conditions are imposed, the offer may be accepted and that the advantages of a speedy settlement outweigh other considerations.

The abdication of His Highness Sri Tukoji Rao Holkar presents some peculiar features. Following the murder of a British Indian merchant in the streets of Bombay by some officers of the Indore State, the Government of India demanded that an enquiry should be held into the whole affair so far as it affected the Ruler of Indore. It was clear that the Government of India was, even accord-

ing to international practice, entitled to make this demand. The Serajevo murder was the cause of the Austrian ultimatum to Serbia. The murder of German missionaries in China led to immediate diplomatic action by the Imperial German Government against the Chinese. The action which Lord Palmerston took in declaring a pacific blockade of Greece as a punishment for the injuries suffered by Don Pacifico should show to what extent modern states are prepared to go to uphold the rights of their citizens. The fact that the murder of Mr. Bawla took place in one of the most frequented thoroughfares of Bombay gave weight to the demand of the Indian public that stern action should be taken against all who were implicated in it. The result was that the Government of India offered the ruler a Commission of Enquiry, which the Maharajah thought he could not accept without compromising the rights of the State. Under these conditions His Highness abdicated in favour of his son, whom he installed on the *gadi* before retiring into private life.

Modification of a ruler's powers amounting to a forced assumption of authority by the British Government has occurred among first-class States in Bhopal, Kashmir and Hyderabad. On the pretext that the consort of the Nawab Begum was interfering with the affairs of the State, Her Highness Shah Jehan Begum of Bhopal was, on the representation of Sir Leppil Griffin, forced to accept a minister nominated by the Government in whom all authority was vested. In the case of the Maharajah Pratab Singhji of Kashmir, the Government of India intervened on the pretext that he was in correspondence with Russia (an accusation which was disproved immediately) and that he was under the influence of weak and corrupt courtiers. The Maharajah was deprived of all authority, which was vested in a council nominated by and acting under the orders of the Resident (1889). The recent case of the Nizam is similar. The Ruler of Hyderabad was forced to appoint certain European officers as

members of his council, and also to nominate a president acceptable to the Viceroy. His Exalted Highness has further been told that the council system has become an integral part of the constitution of Hyderabad, and that the Government of India is interested in the appointments to the council. These words can only mean that the ruler of the Deccan has had a constitution forced upon him which he is not free to change, and that the Government of India claim the right of 'advice' with regard to the composition of the executive council.

The anxiety of the Government of India to save themselves from the odium of deposing a ruler, and their preference for a policy of veiled deposition comes out equally clearly in the case of the Maharana of Udaipur.[1] The treaty with the Maharajah of Udaipur does not belong to the earlier period. It is on the basis of subordinate co-operation. Article III of Lord Hastings' treaty with Udaipur reads: 'The Maharajah of Udaipur will always act in subordinate co-operation with the British Government and acknowledge its supremacy'; though a later clause lays it down that 'the Maharajah shall always be absolute ruler of his own country.' The action against the late Maharana, however, taken as it was with a suddenness which is difficult to understand, can hardly be brought under the comprehensive clause of subordinate co-operation. The facts are these. In 1921 there was much agrarian discontent in the State, which led to something like an open outbreak. This was, however, put down by the Maharajah's forces. But, taking advantage of this situation, the Agent to the Governor-General wrote to the Maharajah demanding his abdication. The reasons given by Mr. Holland (now Sir Robert Holland) were that the Maharajah had become too old, and that he was attempting to concentrate too much in his own hands, and that as a result the administration had weakened. The Maharajah resented this, and replied

[1] This case is fully dealt with in a recent book. See A. P. Nicholson, *Scraps of Paper*, Benn, 1930.

that he was perfectly ready to rectify any serious causes of complaint and to delegate some power to his son. This suggestion was accepted by the Government of India, who stated that they were fully aware of the Maharana's labours on behalf of his people throughout many years and of his concern for justice, and of His Highness having performed the duties of his high office with unselfish and unremitting zeal. But, added the Viceroy, 'the mere fact that the whole of the administrative arrangements have been concentrated in your Highness's hands has lately rendered your task impossible of achievement.'

The Udaipur case is valuable in two ways. It shows firstly that the Government is now fully aware of the odium that would attach to it if it were to take strong action against ruling Princes, and secondly that in consequence thereof, a policy of meddling on minor pretexts has been developed. On the first point every State has now learnt to appeal to other rulers, and to interest them by pointing out that what affects one to-day may be used to-morrow as a precedent against another. The Maharana of Udaipur in his letter to the Government of India drew pointed attention to this: 'The importance of this to Indian States can scarcely be exaggerated. The more clearly it is studied the more apparent does it become that the treatment of Udaipur is not only at variance with those expressions of policy contained in Chapter X of the *Report of Indian Constitutional Reforms* published in 1918. That Report lays down the principle that in a composite society like India's, and in times when ideas are changing rapidly, the existence of States in which ideals of chivalry and personal devotion survive as the motive principle of the government, has been more clearly seen to have an abiding value. There could be no more frank recognition of the wisdom of leaving Udaipur to be governed according to traditions established for loyalty and devotion, and the foolishness of trying to force new ideas on those who do not desire them. These words

were written at a time, to quote once again the Report, "when some rulers are perturbed by a feeling that the measure of sovereignty and independence granted to them by the British Government has not been accorded in full, and they are apprehensive lest in process of time their individual rights and privileges may be swept away." There is a good ground for that apprehension, for after the peremptory demand that His Highness should abdicate, no State can feel secure from intervention, even though there does not exist the one stipulated condition precedent to intervention.'

Secondly, the Udaipur case shows that when in the anxiety 'to avoid the odium of public punishment of rulers' the Government had to fall back on a policy of veiled deposition, its natural result was avoidable interference on trivial pretexts.

The only conditions which justify a deposition are flagrant misuse of sovereign powers, open disloyalty involving breach of the alliance with the Crown, and breach of inter-State relations threatening the peace of the country. In any of these three circumstances, the Paramount Power would be entitled to intervene forcibly, but the instances that have been cited have demonstrated clearly that the Government of India has succeeded in extending the scope of intervention. An attempt has been made on the part of the Government of India to claim a close suzerainty, which would, despite the clear provisions of the treaties, give it direct right of intervention, with the threat of deposition in the background, on all and any matters. That this has been the tendency was frankly recognised in the Montagu-Chelmsford Report, and efforts have since been made through the Chamber of Princes and the conventions adopted by the Government to check the Government's autocratic authority in this direction. Up to the present no change of policy has been adopted, especially as the Princes are individually anxious that their cases should not come before committees and tribunals.

Other rights claimed and enforced by the British Government as appertaining to its paramountcy are those connected with the assumption and bestowal of titles, honours, salutes and precedence. So far as the rulers are concerned the Crown has claimed to be the fountain of all honour, and has tried as far as possible to restrict the assumption of new titles. No title is considered valid without the British Government's recognition, and any titular addition which a Prince may choose to assume is generally deprecated. The Ruler of Rewa, when he wished to be styled Sri Samrajya Maharajah Dhiraj Shri Maharaj Bahadur Shri, Shri Nivas Kripa Patradhikari—a title which almost approximates to that of the Holy Roman Emperor—was informed by the Political Agent that it would be impossible to support the use of the title.[1] The style and titles of most of the Indian Princes date from a time anterior to their alliance with the British Government, and are mentioned in the treaty or in some other formal communication. A *kharita* from the Viceroy generally enumerates these titles in full, and is a model of how a Prince should be addressed. Thus, in a *kharita* to the Maharajah of Gwalior the following titles are enumerated :

His Highness Muktar ul Mulk, Amir ul Iktedar Rufeeus shan wala Shikoh Mohta Omrah Maharajadhiraj Jaya-ji Rao Scindia Bahadur, Srinath Mansoori Zaman Fidvee Huzrat Malikeh Mooazma Rafeez Denjeh Inglistan, G.C.S.I., etc., etc.

Any further addition to this, if it is to be officially recognised, must be granted by the British Government, unless it could be proved that it was in use even at an earlier date, though for the time in abeyance. Thus the Nizam was given the title of ' His Exalted Highness,' and was permitted to add to his dignities the designation of ' Faithful Ally of the British Government.' Hereditary titles and advancements are conferred on the Princes as

[1] Mr. Kealey's letter dated October 21, 1922. The use of this title has since been permitted.

an exclusive right of the Emperor. In a recent circular (1928) the Government of India held that titles given by Indian rulers to their sons and other members of their family would not be recognised if and when the grantee became the ruler, as the right to confer titles on ruling Princes was the privilege of the King-Emperor. The title of His Highness, again, is confined to those who enjoy more than eleven gun salutes, though some of them enjoy no rights of sovereignty and possess no territory. Salutes are meant universally to indicate the status of the rulers, the highest class being entitled to twenty-one salutes. A table of salutes was drawn up in 1857 and published in 1864. It has been modified since then by additional grants and advancements. A distinction is made between dynastic and personal salutes. Thus the Maharajah of Bikanir, who is entitled to a salute of seventeen guns, enjoys nineteen guns as a personal distinction. The Government also reserves for itself the right of decreasing or even taking away the salutes as a punishment. In 1866 the Maharajah of Datia was punished in this way by a reduction of his salute, which, on a later occasion, was withdrawn. In 1870 the Maharajah of Jodhpur was also reduced in status in this manner. The cases in which salutes have been withdrawn or reduced are very rare, and the Government, anxious to 'avoid the odium of punishing a ruling Prince,' has not of late resorted to this step, lest such an action should arouse criticism throughout India and make an unfavourable impression on other ruling Princes.

The limitation of titles and dignities is also enforced in other ways. The title of His or Her Highness, for instance, is confined to the ruler and his consort, and cannot be used officially outside the State by any other member of the ruling family, although inside the State these titles are often applied loosely. It is only by a specific grant that either the heir apparent or others closely connected with the ruler can claim the title. Thus the Yuva Rajah of Mysore has been given the title of His

Highness. Again, the Government avoids the use of the word ' Prince ' as a title of sons of ruling Princes. Thus, the son of a Maharajah, even if he is the heir-apparent, is addressed as the Maharaj Kumar, and that of a ruling Nawab as Nawab Zada. The only Princes officially recognised are the Prince of Arcot and Prince Akram Hussain Khan, the son of the last King of Oudh. There is, as is well known, no uniformity in the titles of the heirs-apparent, but the custom of the Government has been to recognise the local title. Thus, in the Sikh States, the heir-apparent is called the Tikka Sahib and his consort the Tikka Rani. In Pudukotta, he is styled Dorai Rajah and his wife Dorai Rani, while in most of the other Hindu States the title is Yuva Rajah and Yuva Rani. In Travancore and Cochin alone, the title of Elaya Rajah finds currency. An official ruling has now been given that in the case of States enjoying a salute of eleven guns or more there would be no objection to the use of the title Yur Raj or Vali-i-had for the heir-apparent. The word ' royalty ' as a generic term is not recognised so far as Indian Princes are concerned, and the families are officially alluded to not as royal families but ruling families. Their governments used to be styled as Durbars, though the practice has now been given up. In Hyderabad, however, the visitor can see in the centre of the city a building on which is written ' Government Post Office,' by which is meant not that of the Nizam, but that of the British Government.

The grant of titles by the rulers was also limited at one time. The Begum of Bhopal in 1919 gave the title of Nawab to General Obeidulla Khan, her second son. The Political Agent in his confidential D.O. No. 188, dated August 9, 1919, wrote that ' the Government of India regret that your Highness did not consult the Political Agent before such action, and they trust that in future this title will not be conferred without previous consultation. As regards other titles, I am to inform your Highness the grant of the title of Rai Bahadur is wholly

inadmissible under the general rules, *i.e.* that titles similar to those given by the Viceroy should not be given by ruling Chiefs, even to their own subjects.' The Begum was also informed that pending the consideration of the Government the title of Rajah should also not be given. When Her Highness in a spirited protest pointed out that the rulers of Bhopal had always given these titles, the Viceroy, to whom the matter was referred, said ' that it had been found necessary in order to safeguard the royal prerogative to define more strictly the policy regarding the bestowal of titles.' The objection was, however, finally withdrawn. There was also considerable hesitation on the part of the Government to recognise the titles granted by Indian rulers to British subjects, and it is only recently that the practice in this matter has been regulated. Now the rulers may give all Indian titles which the British Government does not itself give. The rulers enjoying full sovereignty grant the title of Nawab and Rajah even to British subjects, and though the Government has shown hesitation in recognising them officially, it has not so far been able to prohibit their use or even to withhold official recognition.

A clearer assertion of royal prerogative is the grant of Orders to the rulers themselves. The two Indian ' Orders ' are the ' Most Eminent Order of the Indian Empire ' and the ' Most Exalted Order of the Star of India.' The King is Patron, and the Viceroy Grand Master, of both. Each Order is divided into three sections : Companions, Knight Commanders, and Knight Grand Commanders. Every ruler of any position is a member of one of these Orders, while the first-class Princes are invariably created Grand Commanders of one of the two, and often of both. A smaller distinction than a G.C.I.E., for a ruler of first-class status, is an indication of serious displeasure, and the fact that the late Maharajah of Nabha, of all the ruling Princes of India, was the only one without a title of this kind was in fact, and was understood to be, a mark of almost open

displeasure. Other British titles like the Order of the Bath, Order of the British Empire, and the Victorian Order are rarely given.

The establishment of Orders of Chivalry by Indian Rulers has long been looked upon with disfavour, though it was never actually prohibited. The Maharajah Gaekwar, the Maharajah Scindia, the Maharajah of Mysore, and other important Rulers have their own Orders, which they confer on their own subjects and upon others. The Government of India have now recognised this right, subject to the qualification that the Orders given by the Indian rulers are worn only after those given by the Imperial Government.

Rulers of Indian States may accept foreign titles only with the permission of the British Government. That is implied in the clause which is invariably included in all treaties, that the rulers in alliance with the British power should not have any connection with foreign states.

Precedence among the rulers is also decided, when a decision is necessary, as for instance at a Durbar, by the Paramount Power, whose decision is final and is enforced, as in the case of Jodhpur already quoted, with the severest penalties.

VI

EXTENSION OF IMPERIAL AUTHORITY

BESIDES the rights examined in the previous chapter, the Paramount Power has claimed and assumed for itself, for military and other imperial considerations and international obligations, many rights which have affected the sovereignty of the Princes. These are of a character more complicated in their legal and constitutional bearings, and have to be studied with detailed care. The facts are scarcely in doubt. The authority of the Paramount Power has grown in many ways at the expense of the Princes. Lord Chelmsford in the speech already quoted declared frankly that in the case of extra-territorial jurisdiction, railway and telegraph construction, limitation of armaments, coinage, currency and opium policy, and the administration of cantonments, the relations between the States and the Imperial Government have been changed. These changes have affected seriously the treaty position of the Indian States, and must be taken into consideration in any attempt to understand the rights and authority of the Princes. They can best be studied under three heads: military, imperial, and international.

From the military standpoint, the Government of India followed from the very beginning the policy which was enunciated as early as 1804, not only of defending the States from external aggression, but of rendering them powerless against British power. 'The fundamental principle of His Excellency the Governor-General's policy in establishing subsidiary alliances is to place the States in such a degree of dependence on the

British power as may deprive them of the means of prosecuting any measures hazardous to the security of the British Empire.'[1] In its military policy, as far as the States are concerned, the Government of India has consistently put this principle into operation by the establishment, near or inside the States, of military cantonments with British jurisdiction, from which it could quell an incipient rebellion or frustrate hostile movements. The cantonments at Secunderabad, Bangalore, Mhow and Sialkot demonstrate this. Secunderabad, though only a few miles from the capital of the Nizam, is a British administered area where the writ of His Exalted Highness does not run, and where British troops are quartered, so that the Subedar of the Deccan may feel at all times that imperial power is near enough to him. The sovereignty of these areas has practically passed into the hands of the British Government, though in most cases they are acquired only on lease. In regard to the cantonment of Bhuj in Cutch, the Government of India declared that it ' cannot recognise the right of the Durbar to exercise *any* jurisdiction within the British cantonment of Bhuj or to levy taxes therein,'[2] though for many years before this the State had realised the taxes from that area. It was specifically stated that the revenue rights of the Durbar will not be in any way infringed, and yet a claim was made that ' in so far as any revenue accrues from rules and arrangements made for the sake of order and good government within the cantonment such revenue undoubtedly pertains to the British Government.'[3] In 1902 the Political Agent wrote saying that for ' all practical purposes ' Bhuj cantonment is British territory. When these areas are thus converted into British concessions, it is not surprising that they should become asylums for those who are dissatisfied with the rulers of

[1] Despatch of the Government of India to the Resident at Hyderabad, dated February 4, 1804.

[2] Letter dated September 5, 1892.

[3] Letter from Mr. Stace to Diwan of Cutch, dated September 21, 1893.

the State, and desire to further intrigues which would bring them within the law of the State. Thus, though Secunderabad is a mere speck within the area of the Nizam's territories, it is possible for those who are dissatisfied with the administration to gather together in that place and to carry on their political propaganda. For years a seditionist paper which reviled Travancore and its rulers was printed and published at Thangaserry, a small strip of British territory within the State. The complaint of the Maharajah of Udaipur in the letter quoted earlier was that agitators who had made Ajmer their base used to go and work among the ignorant peasants of his State. The rulers have no authority and their courts have no jurisdiction in these cantonments, which have become for them a visible sign of subjection.

An equally important encroachment is the cession of rights and jurisdiction over railway lines passing through the States. After the Mutiny the necessity of railways was realised, and the High Command decided to build some main lines which would make transport of troops and material easy. The *sanads* granted in 1860 made clear provision for this. In the *sanads* given to Jind and Patiala, Lord Canning had expressly laid it down that 'the Rajah will furnish at current rates through the agency of his own officers the necessary material required for the construction of railways, railway stations, roads and bridges.' With the major States, like Gwalior and Hyderabad, the question was settled by negotiation, but on the smaller tributary States the Government imposed the obligations as a part of military defence. In the Mysore agreement of 1881, which was drawn up after full experience and was more in the nature of a grant, it was laid down 'that the Maharajah should grant such land as may be required for the construction of railways and *transfer full jurisdiction* within such lands.'

The question of jurisdiction on the railways, which manifestly makes an inroad on the judicial independence

of Indian States, will be dealt with in another chapter. It is of importance here to note that railway lines now intersect most States, and on these lines the rulers of Indian States (with the important exceptions of Jodhpur, Bikanir and Hyderabad) have but insignificant rights. The two important States that have so far refused to come into line upon railway policy are Kashmir and Cutch. The basis of all railroad claims on Indian States is the principle that communication, transport and mail services are parts of the rights of military defence for which the exclusive authority rests with the British Government. The subsidiary treaty is fundamentally a treaty which guarantees military protection, and imposes on the Central Government the duty of defending the States and their rulers. This right, which the States have surrendered to the British, involves the right to take all military measures, and since in modern warfare railway transport, mail service and the maintenance of unbroken lines of communication are essential, the right of the Paramount Power for the *ultimate* control of railway lines cannot be disputed.

Without the permission of the Government of India, the States cannot build railways unless they are unconnected with other lines and are purely for internal purposes.

Telegraph lines, the telephone system and postal arrangements are also included in the defensive scheme. Telegraphs are worked as Government departments, and have been established all over India, including the States. Officers employed by the Government of India with their staffs reside in the States, inspect local offices and exercise departmental jurisdiction. The States in which these offices exist, though allowed certain privileges in their use, are treated as having no special right over the lines. No one thing has so emphasised the extension of the authority of the Central Government as the telegraph offices, which are exclusively managed, controlled, supervised, even when the offices are located in Indian States, by the

officers of the Government of India. The only State which at present possesses a telegraph system of its own is Kashmir. The Kashmir telegraph system is connected with the British Indian telegraph system which also operates in the State. As a result of negotiations between the Standing Committee of Princes and the Political Department, the States are now allowed to construct telegraph lines of their own within the States, but if these are to be connected with the British system, special agreements are necessary. The same is true of telephones.

The postal system may also be considered in this connection. Many of the important States, like Hyderabad and Travancore, have their own internal postal system, but the British Government, for purposes of all-Indian communications, has introduced into most of the States the British postal system, with its own offices, officials and superintending staff. In Gwalior, Patiala, Jind and Nabha, there is a special system of exchange based on a postal convention. In these States there are no British Post Offices (except in cantonments, railway stations, etc.), and the letters posted in the State post offices are carried all over India. The stamps used in these post offices are British Indian, with the name of the States printed on them. In all other States the British Post Office has the exclusive right of all-India mail service, and except in a few (Hyderabad, Travancore and Cochin being the most important) the right of internal service.

The movement for postal unity—for the exclusive control of State postal services by British India—began in 1870 when Mr. Monteath, after an enquiry into the question, reported that 'we could not work into our system any Native posts or weave their system into ours.' The relations between the diverse postal systems were complicated, and this was felt to be a great hindrance to the development of trade in Indian States. Sir Frederick Hogg, who reported on the question in 1880, came to the conclusion that it was important that some arrangements

should be made with the States in order to put the relations of the imperial post on a satisfactory basis. He negotiated the convention with Patiala in 1884. The principle of the convention was opposed to the idea of postal unity, but Sir Frederick Hogg realised that a scheme of co-operation was in the long run better than a unity imposed without the consent of one of the parties. He remarked in his memorandum, dated July 3, 1883: 'The measure is one of no small importance, for if it succeeds the system can be extended to other Indian States.... We shall thus, I trust, largely develop the correspondence of those States with British India and increase considerably our money order traffic and other branches of business.' But the officers who followed him were staunch champions of unity, and though the convention has been a great success, no attempt was made to apply its principles to States other than Patiala, Nabha, Jind and Gwalior. In all other States the British Post Office has extended its operations, and in most of the States exercises exclusive rights of the carriage of mails. Another right claimed by the Government in this connection is that of forcing the States to pay compensation in case of robbery of mails within State territories, even when such robbery is due to no lack of precaution.

In all these three matters, railways, telegraphs and postal service, policy tends unavoidably towards the extension of the rights of the Paramount Power. They provide the chains by a judicious utilisation of which the States may slowly be bound hand and foot, as a matter of natural evolution, before they can awake to the reality of their position. It cannot be denied that these encroachments, though they run counter to the sovereignty of the States and amount in some cases to a usurpation of authority, have been made in the interests of unification, especially in the matter of defence. Their influence in stimulating the growth of a feeling of Indian nationality cannot be denied. But they have helped to transform the independent States of India into constituent members

of an Indian polity. It is for this reason that, though much pressure was put on them, both Afghanistan and Nepal refused the extension of British postal and telegraphic services, fearing lest these appurtenances of civilisation should affect their status as independent States.

A further phase of imperial expansion dictated by military and defensive considerations has been the definite limitation of State forces. The earlier treaties contain in general no clause which sets a specific limit to the military forces to be maintained by the rulers, but as the main purpose of those agreements is to entrust the defence of the State to the Paramount Power and to maintain a subsidiary force for that purpose, the question of limiting the State forces is clearly within competence of the Central Government. In fact, one of the main articles of the treaty with the Nizam (September 1, 1798) was for the purpose of disbanding the French regiment in Hyderabad service. Most of Wellesley's trouble with Oudh was on the score of the Vizier's ill-disciplined forces, the reduction of which the Governor-General demanded in the interests of peace and security. Writing to the Secret Committee of the Court of Directors, Wellesley declared that he was intending to put into execution such a reform of the Nabob Vizier's military establishments as should eliminate all future danger from the frontier of Oudh, and that he had requested the Vizier to disband under certain regulations a proportional part of his own useless and dangerous force. 'The conduct of different corps of Your Excellency's troops,' wrote the Governor-General to the Nawab, 'had in several instances previously to the approach of Zeman Shah abundantly manifested that no reliance could be placed either in their fidelity or in their discipline. Many of them had mutinied and were prevented from proceeding to acts of open violence against Your Excellency's person by the presence of the Company's troops,' and on this ground immediate disbandment of a large portion of

it was demanded.[1] The rebellion in Travancore was also due to this cause. The Company demanded that the Carnatic battalion should be disbanded. As Cochin had been brought under the Company's protection and Mysore had ceased to menace the frontier of Travancore, there was no necessity for the State to keep up such a large force; but as it was not in the treaty the demand was resisted and the Dewan led a revolt, which was crushed. The chief northern Indian States were allowed to maintain large military establishments of their own in the early days. The Maharajah Scindia in particular maintained a large and unwieldy establishment for a considerable time. This was the cause of much internal trouble in the State. In the intrigues that followed Doulat Rao Scindia's death in 1827 the army took sides and a civil war ensued. The army of Scindia became a real menace to the State, and its violence led to British intervention in 1843, when Lord Ellenborough ordered General Gough to march on Gwalior and demand the disbandment of the army.

During the time of the Mutiny the danger of these forces was again manifested. Holkar's troops rose in revolt and Scindia's forces left their Maharajah and joined Tantia Topi and the heroic Queen of Jhansi. In no Hindu or Moslem State was the loyalty of the troops above suspicion during the days of the Mutiny; and even in Hyderabad it was only the firm hand of Salar Jung that kept the military under control. After the Mutiny there was naturally much distrust, and the Government of India was inclined to consider the troops of the Indian States a source of danger to its safety. But a better policy was soon discovered, in which the safety of India as a whole and the dignity and the sovereignty of Indian States were combined for mutual benefit. It was Lord Dufferin who first saw the possibility of developing the military resources of the States for the benefit of the Empire, while at the same time affording

[1] *Wellesley Despatches*, 189, 193.

an opportunity for the military spirit in the States to survive.

Advantage was taken of the offers of help from the Princes during the Russian War scare to organise the Imperial Service troops (1889). The principles underlying the scheme as it then took shape were these. The troops would in each case be the spontaneous offer of the rulers; they would be recruited from among the people of the States; they would be officered by Indians. It need hardly be said that where the spontaneous offer was slow in coming, a little persuasion was applied. British officers were attached only as advisers and inspectors. Naturally, there was much difference in the discipline as well as the efficiency of the units. They were, however, used for some field service on the frontier before Lord Curzon's time, and because of the experience so gained that Viceroy undertook their reorganisation. In a letter dated April 27, 1904, Lord Curzon told the Princes that the Imperial Service troops had achieved great success. 'The discipline, the equipment and the efficiency of nearly the whole of these troops . . . have steadily risen. Every year the reports of the Inspector-General testify to a continuous advance. . . . The Imperial Service troops have been employed and have rendered excellent service in the frontier campaigns of the Government of India. . . .' With a view to improving their organisation, Lord Curzon suggested that 'the Imperial Service troops should be more closely incorporated in the military organisation of the Indian Empire, should on occasions be given a turn on the frontier, be given the opportunity of coming into British Cantonment Camps for instructions and manœuvres and of being brigaded with British troops.'

The present position of the Indian State Forces (as they are called now) as an effective second-line defence has been well recognised by the authorities. Lord Curzon was the first to utilise them for service outside India, and since then they have won great distinction in the Great

War on many fronts, and in the Afghan War. The Jammu and Kashmir troops, Bikanir Camel Corps, the Gwalior, Patiala and Mysore forces were of great service, and their efficiency and their courage were recognised by the British High Command. These forces, though nominally loaned at the discretion of the Princes, may be said to be maintained for the service of the Central Government. They are trained and equipped with the help of British officers, who are called military advisers. There is a permanent staff, whose chief officer is called the military adviser-in-chief.[1] Since the Great War these troops have been increased in strength and reorganised in three classes, class A, class B, and class C. Class A consists of troops reorganised on the basis of post-war experience, and armed and equipped in accordance with the Indian Army system. They are kept in the highest state of efficiency, fit for field service. Class B is equipped and maintained on the pre-war basis, and class C is a militia not permanently embodied. The total number of troops of all arms in State service amounts to over 50,000.

These are not all the military obligations of the States. The later treaties expressly lay down the obligations of the States to furnish troops according to their means at the requisition of the Government, which amounts to a right on the part of the Paramount Power to claim the whole resources of the States in case of war. But so far as the States in earlier alliances are concerned this is not the case. There the military obligation is entirely on the side of the British Government, but with the change of time the position has also changed, giving the Paramount Power greater claims and more extensive rights in the case of war, as the obligation of defence is inherent in the clause that the enemies of either are the enemies of both. There is, however, no justification, legal or constitutional, for the statement of Lee Warner that in times of war the

[1] See *Army in India and its Evolution*, p. 157, Supdt. Govt. Printing, Calcutta, 1924.

Princes have an ' unlimited responsibility.' [1] In the case of the earlier States, it was in order to relieve them of military responsibility and of the Company's defence being made to depend upon their irregular and inefficient troops that they were forced to subsidise British troops, and to pay for them in cash or by the assignment of land. When their responsibilities have thus been taken over expressly and consideration received year by year or, as in the case of the Nizam and Scindia, territories annexed instead, the claim to make ' unlimited demands in case of war ' cannot be maintained from any point of view except force. Lee Warner's argument to prove that the Paramount Power possesses any right that it cares to claim is based on analogies and *a priori* considerations which can scarcely invalidate facts.

The political and legal encroachments on the rights of Indian States have been equally fundamental. In coinage and currency, in customs and fiscal policy, in claiming direct allegiance from the subjects of Indian States, and in the arrangements for extradition, the Paramount Power has assumed legal and constitutional rights which have made serious inroads upon the guaranteed prerogatives of the major Indian sovereignties.

Coinage, with rights of separate currency, has been one of the rights of sovereignty from time immemorial in India. During the time of the Moghuls, the emperors took special care that their subordinate princes should not issue their own coins. With the breakdown of the Moghul power each State set up its own mint and coined currency of its own. Thus at the time when the Company made alliances with Indian States the right of having their own coins was enjoyed by most States. This was found by the British Government later on to be an inconvenience, and for a long time it has been the policy of the Government to impose, without obvious violation of rights, its own currency on the States. It was laid down that when the coinage rights of a State had fallen

[1] Lee Warner, pp. 234-5.

into abeyance they could not be revived, and that coins which had for some time ceased to be current should not be re-introduced. In the Instrument of Rendition by which Mysore was handed back, it was specifically laid down that ' the separate coinage of Mysore State which has long been discontinued should not be revived.' The State of Jingira was prevented from reviving its coin. In most of the States British coins are now in general use, and have become in some cases the exclusive currency. In Hyderabad there is, however, the Sicca rupee, and the Government of His Exalted Highness the Nizam issued currency notes immediately after the war, thus extending his rights of coinage. This fact is of importance, as the policy of the Government has been to oppose the extension of privileges and prerogatives in this direction. Faced with a *fait accompli* it was powerless to intervene. The principle which is here involved is of value. Udaipur, it will be remembered, has separate coinage, and one of the complaints against the Maharana was that the exchange between British India and the Udaipur State was complicated. Travancore has on paper a rupee which, however, is not coined, although all the State accounts are kept in it, and although the half-rupee and quarter-rupee silver coins are issued. In Rajputana there are in circulation twelve different gold mohurs, some of which are issued annually, and each State has a different rupee which differs slightly in value from other coins of the same name. There is, practically speaking, no system for recalling an older issue and replacing it by new coinage. In Alwar (1905) and in Bikanir (1893) British coins were introduced during minority administrations under orders from the political agent acting as President of Council.[1] During the minority of Maharajah Ganga Singhji the following agreement was entered into (February 16, 1893). ' The Bikanir Durbar agrees to abstain during the term of thirty years, from the date

[1] *Currencies of Hindu States of Rajputana*, W. W. Webb, London, 1893, Introduction.

of the notification aforesaid, from coining silver and copper in its own mint.'

The British Government on various pleas have at different times tried to make rules about the minting of coins and about their use. It was laid down that mints should be worked only in the capital, and only so much should be coined as is absolutely necessary for currency in the States. In a few minor States pressure has been brought to bear for the free circulation of even the smaller British coins. The objection from the State's point of view is twofold: first, that it is an invasion on the guaranteed rights of the States, and, second, that it is an interference with a source of legitimate revenue. Besides these two points, there is also the consideration that, in some States at least, the smallest unit of general currency is even smaller than a pie, which is a matter of great importance for the poorer classes.

But in spite of all this, the universalisation of the British rupee and its fractions has been one of the main and obvious symbols of the extension of British rule. Everywhere in India the rupee is legal tender, with the result that even where, as in Hyderabad, there is an absolutely different currency, the British coins circulate freely and create a delicate and complicated exchange problem. The States are also deprived of their just and legitimate profits from coinage, and with the increasing hold of the British rupee and the nickel anna, their monetary rights are in danger of being whittled away. In this the Central Government has also been helped by the presidency banks and the Imperial Bank of India, which have had a practical monopoly of banking business in the States also. Since these deal only in British currency their activities have gone a great way towards making the British paper issue as well as the smaller British coins current in the States. In these as well as other matters, the European banks have greatly helped Government tendencies.

The extension of British authority so far as customs

are concerned has been mainly in relation to sea-borne trade. As only Travancore, Baroda and Cutch of the larger Indian States have sea coasts, no general policy has been necessary. With Travancore, the British Government has entered into an inter-portal convention by which the State is compensated for its loss of sea customs by a consolidated sum. So far as land customs and transit duties are concerned, the States have so far maintained their rights, though the Government has been anxious to secure a unified policy on this matter. A Zollverein on the German model has been the British ideal, but the States have resisted it, to a large extent successfully. Their complaint has been that the protective customs which the Government of India are now introducing amount to an indirect taxation on the Indian States, and thereby involve a breach of their sovereign rights. The Princes have put forward a claim to share the custom receipts, since their subjects also contribute to it. Speaking at the Dusserah Session of Mysore Representative Assembly (1924) the Dewan of Mysore declared that it was unjust that the Government of India should impose indirect taxation on the States, and claimed that a method should be devised by which the States could be given their due share. It is also known that a committee of the Chamber of Princes examined this question, and the matter has been under discussion between the States and the Government. This subject is treated at some length in a later chapter dealing with the economic relations of the States with the British Government.

The most important matter in which the political authority of the Government of India has extended is the claim put forward about direct allegiance of the subjects of Indian States to the British sovereign. It was in the case of the Manipur rebellion that the British Government enunciated the principle that the subjects of Indian States owed direct allegiance and loyalty to the British throne. In previous revolts this question was never directly brought under discussion. In the Travancore

rebellion the view was taken that the revolt was against the Maharajah, and that the British intervention was only for the purpose of upholding his authority. In the case of Coorg war was actually declared on the Rajah, and his subjects were assumed to be enemies and not rebels. The actual *casus belli* was provided by the action of the Rajah in imprisoning the British envoy. No claim was made that as the Rajah was a subordinate ally his subjects bore allegiance to the Company. This further assertion of sovereign rights was reserved for a much later occasion. The opportunity was provided by the Manipur State. The brother of the ruling Rajah rose in rebellion and installed the Jubraj on the *gadi*. The British Government recognised the Jubraj, but demanded that the brother who had raised the revolt should be expelled. This the Jubraj refused to do, and a British force entered the territory, deposed the Jubraj, and tried him. He was sentenced to be hanged. The subjects of the Manipur State were enjoined by a proclamation to take warning by the punishment inflicted. This was an attempt to claim direct allegiance from the subjects of Indian States. The question whether in an act of resistance by a ruler, the subjects of the State should loyally obey the Maharajah, cannot be answered completely by a proclamation from the Government of India. Subjects of a State like that of the Nizam owe their immediate duty and allegiance to their sovereign. The claim put forward that the Imperial authorities can dissolve this allegiance by proclamation is tenable rather on the basis of superior strength or political expediency than of law or of treaty obligations. The idea that new obligations can be created or established rights taken away in the case of States in alliance by the Government of India issuing either a circular letter or a proclamation is not sound. But such action, though it could establish no legal claim, is a clear enough indication of the tendency towards the expansion of Imperial authority. The Government of India has exerted itself to push forward

new claims and to extend old ones. For this purpose, constitutional, legal and feudal theories have been brought into use. Each in its turn has served to deprive the rulers of some part of their authority, or to give to the Central Government some new basis for intervention.

The subsidiary treaties uniformly contain a clause restricting the external sovereignty of the States which enter the alliance. They are constrained by agreements not to enter into negotiations with foreign powers. They cannot receive diplomatic or consular representatives from other powers, and even the employment of non-British Europeans without the express sanction of the Government of India is strictly prohibited. Their subjects in other countries are classed as British protected citizens, and Europeans in Indian States are under the guarantee and protection of the Paramount Power. It is clear that so far as external relations are concerned the authority of the Central Government is absolute and open to no kind of objection.

The treaties with the States are explicit on this point of relationship with non-Indian powers. The purpose of the treaties, as was pointed out in an earlier chapter, was the fear of foreign intervention, and even in the earlier treaties the stipulation is made that foreigners should not be employed or negotiations with foreign states undertaken without the sanction of the Government of India. Parliament itself declared in 1876 that 'the several princes and states in India in alliance with Her Majesty have no conventions, engagements or communications with foreign powers, and the subjects of such princes and states are, when residing or being in places hereinafter referred to, entitled to the protection of the British and receive such protection equally with the subjects of Her Majesty.' This principle has been accepted and the natural implication of it, such as the responsibility of the Government to afford protection to Indian State subjects abroad and to safeguard their interests, has also been recognised.

The international obligation of the British Government, so far as Indian States are concerned, involves certain definite rights which have inevitably restricted the sovereignty of the States. The Government is bound to protect the lives and property of foreigners, and to afford them the enjoyment of just rights and privileges. There is a further obligation on the part of the Paramount Power to see that international agreements entered into with foreign powers are honoured in the States. For example, treaties entered into with certain European States give the nationals of those States the right of being tried before a jury, and as in foreign relations the British Government represents Indian States also, the obligations so undertaken are binding on the rulers of the States, and the supreme Government has the right as well as the duty of enforcing them even within the jurisdiction of the protected rulers. Since the States have no separate international status, their maritime boundaries in the case of Travancore, Cochin, Baroda and other States having coastline, and the land frontiers in the case of Kashmir, can only be regarded as British boundaries, and admiralty rights, in the former case, are vested in the Paramount Power.

The case is, however, different when the Government of India enters into an agreement which restricts the internal sovereignty of the States and interferes with its administration. The Crown is bound by solemn engagements to protect the authority of the States, and any treaty which directly interferes with the internal autonomy of the rulers requires their sanction. This position was frankly stated by the Maharajah of Bikanir when the Government of India requested the acceptance by the States of the slavery convention which it had agreed to. The Maharajah said that these matters were not such that ' obligations could justifiably be directly or indirectly accepted by the Government of India, in absence of previous consent, or express authority of the State or States concerned . . . and the adhesion of the Govern-

ment of India cannot be binding upon the Indian States since . . . the responsibility of enforcing the provisions of such a convention upon the Indian States' territories, over whose domestic concerns the Government of India have no control, would rest with the States concerned.' [1] This point of view was accepted by the official spokesman of the Government of India at the League of Nations. Sir William Vincent stated at the Sixth Committee of the League of Nations :

> The draft Convention, however, imposes obligations upon the signatory States, which would involve in the case of India direct interference with the domestic administration of the Indian States. The Government of India would be prepared to urge the Rulers of the States to initiate measures of reform.

The obligations of the Imperial Government to foreign powers both in war and in peace are, of course, binding on States. Thus the exportation of contraband material in time of war, when the Empire is neutral, to countries engaged in hostilities, and other acts of that nature which the Paramount Power has undertaken to prohibit within its own territories, cannot be allowed within the States. In the same manner the obligation to surrender criminals, if undertaken by the Paramount Power in treaties with other States, is binding on the rulers of Indian States.

The obligations of the British Government with regard to the subjects of Indian States in international matters is also well defined. Passports for all foreign travel are issued by the Government of India, and no difference is made between the subjects of His Majesty and those who own immediate allegiance to their own rulers. The preamble of the Statute 39 and 40 Victoria, cap. 46, quoted earlier, expressly states that the subjects of Indian rulers are entitled to the protection of the British Government and receive such protection equally with the subjects of His Majesty. In the agreement with the Sultan of Maskat it was expressly stipulated that ' subjects of the Native States of India who may commit offences within

[1] Letter dated March 9, 1926.

the Maskat dominions shall be amenable to the political agent and the consul's court in the same way as British subjects.'

Besides this legitimate expansion of authority in matters relating to external sovereignty, the Government of India has also claimed and enforced its right to prohibit inter-statal negotiations. The treaties made with the rulers recognise no uniform principle on this question. In the treaty made by Wellesley with Alwar State, it was laid down that ' if any misunderstanding should arise between the Maha Rao Rajah of Alwar and the Sarkar of any other chieftain, the Rao Rajah will in the first instance submit the cause of dispute to the Company's Government, and that the Government may endeavour to settle it amicably. If from the obstinacy of the opposite party no amicable terms can be settled, then Maha Rao Rajah may demand aid from the Company's Government.' It will be remembered that in the original treaty with the Dowlat Rao Scindia, the British Government undertook not to enter into negotiations with Rajput States, and left that prince in unfettered external independence, except so far as negotiations with foreign states and powers were concerned.

But in most cases the Paramount Power has expressly provided against direct negotiations between States. The treaty with the Nizam stipulated ' that in the event of any differences arising, whatever adjustment of them the Company's Government, weighing all matters on the scale of truth and justice, may determine, shall meet with full approbation and acquiescence.' Clauses of a similar character are inserted in most treaties, while in the treaty negotiated by Lord Hastings with the Maharana of Udaipur it is declared that all disputes should be submitted to the arbitration and award of the British Government. Often enough there have been occasions in which relations between neighbouring States like Cutch and Morvi, Patiala and Nabha, Travancore and Cochin, have been strained to the point of hostilities,

and the action and authority of the Central Government alone have prevented bloodshed. The dispute about Kutal Manikkiyam Devasthanam in Cochin State territory reached such a point that the then Maharajah of Travancore wrote that but for the British Government his troops would have marched on Cochin by that time. The violation of Patiala sovereignty by Nabha was one of the charges against Maharajah Ripudaman Singh, and it was amply proved that there was an attempt on the part of the Nabha State to encroach on the territorial sovereignty of its neighbour. Between Cutch and Morvi disputes came to such a head that the Central Government was forced to intervene. The rulers have no right of private war, and by the surrender of their external authority they have abandoned the claim to enforce their demands by appeal to arms. The States have admittedly entered into alliances which recognise the paramountcy of the British Government. Inter-statal disputes, therefore, must be settled by the award of the Paramount Power, and no State has the right of refusing to abide by the decision of the Government. During the last few year the rulers have been demanding that matters in dispute between the States should be decided by a special court. The present method is undoubtedly arbitrary and open to grave abuse. The suggestion that justiciable issues between the States should be decided by a court is undoubtedly in conformity with modern developments and should help to remove much of the dissatisfaction now caused by the decisions of the British Government in these disputes.

This surrender of external authority naturally extends the claims of the central power in relation to the administration of justice with regard to European, British and foreign nationals, and the establishment of extra-territorial authority within the States. Just as the subjects of Indian rulers are under the protection of the British Government when in foreign countries, the subjects of other independent powers are diplomatically under the

protection of Britain when in Indian States, and the British Government is answerable for their safety and security while sojourning in and travelling through those States. This has been expressly recognised by the rulers. The Nizam in a notification announced that in the event of any discussion or dispute arising among Europeans, the Resident at Hyderabad or any other officer whom he may consider it desirable to vest with the same authority, shall be empowered to enquire into and punish any such offences. This acceptance of outside jurisdiction in the case of foreigners is a corollary to the surrender of external sovereignty. So far as foreign powers are concerned, Indian States have no recognised status and have completely lost their identity in the British Empire. The mere delegation of external authority would not, however, mark the disappearance of international sovereignty when the right was never expressly abandoned, as in the case of Nepal and Afghanistan in recent times. The right of Nepal was never questioned, and that of Afghanistan was denied only indirectly by an agreement between Russia and England, to which the Amir was not a party. This, however, is not the case with Indian States, each of which has surrendered its rights and merged internationally in the British Empire. In 1863 the ruler of Bhopal was informed that only the political agent had jurisdiction over European British subjects. The same happened in Travancore, where, in spite of recognised precedent, the British Government insisted that only European magistrates should try Europeans. Though no less an authority than Sir Henry Maine held that legally Travancore had every right to try Europeans, and that no proclamation of Parliament could take away its jurisdiction,[1] the claim of the British Government was pressed, and a compromise was reached by the Maharajah agreeing to appoint a European magistrate specially for the purpose.

[1] *Memoir of Sir Henry Maine*, with Select Speeches and Minutes, Minute dated April 19, 1869, p. 400.

Extra-territorial jurisdiction in Indian States is a very complicated subject, especially as its forms are numerous and widely different. Besides jurisdiction over British and foreign subjects, which is of a capitulatory character, there are a number of other matters in which the Government of India, in virtue of its executive authority, exercises jurisdiction. The capitulatory provisions about European (including American) nationals extended at one time over most countries in Asia, and were abolished only recently in Turkey. These are still in force in Egypt and China. Of the other forms of jurisdiction the most important are those relating to the right of appeal in non-sovereign States, jurisdiction in cantonments and residencies, and the special authority exercised in railway tracts. In many of the non-sovereign States which may strictly be called feudatories, the British Government has the right to decide on appeal in the case of capital punishments. There are also other States in which the Resident has to be informed, though his formal sanction is not required, before capital punishments are carried out. 'Confidential rules published for the official use of the Political Officers' requires that in cases where a petition for mercy is made to H.E. the Viceroy, the Resident has to satisfy himself that no miscarriage has occurred, and political officers often try and exert this authority. Besides these cases of rights expressly reserved, a whole system of British jurisdiction not based on the legislative sanction of British India but on the executive authority of the Governor-General in Council has developed in Kathiawad, Mahikanta and other places where the conflicting jurisdiction of petty chiefs make judicial administration otherwise impossible. Superior political courts of justice and a sort of federal court presided over by an officer of the British Government exercise appellate jurisdiction in Kathiawad.[1] A similar kind of agency court, or 'international tribunal' in a restricted sense of the term, exists also in Rajputana. The rivalry of Rajput rulers and the

[1] See note on Kathiawad, Appendix I, Note 1.

absence of modernised codes of law and judicial institutions in many States made such an institution necessary. But circumstances in Rajputana differ materially, so far as the powers and rights of rulers are concerned, from those in Kathiawad. The common court had to be organised without obvious infringement of the sovereignty of the States. The method devised was a court of 'Vakils' or ambassadors, consisting of the representatives of the chief States in attendance on the agent to the Governor-General, and this body was to form the Court of Appeal. Its jurisdiction is confined to securing justice for subjects outside the territory of their own chiefs. In States where the right of capital punishment can be exercised only with the permission of the Resident, or where administration of criminal justice has to be supervised by him, the extra-territorial jurisdiction of the Government of India is implied as a fundamental part of the Native State constitution.

More extensive and altogether on a different footing is the jurisdiction exercised by the British Government in cantonments and stations occupied by the military. In those areas the State Governments exercise no sovereign functions, and British authority is exercised under the executive authority of the Government of India. Towns like Secunderabad and Bangalore cantonment are more or less in the position of Shanghai, Hankow and other 'concessions' in China, with this difference, however, that the authority exercised in the treaty ports is international. The cantonment towns, though generally leased to Government, are completely under British jurisdiction, but the reversionary right of possession in case the garrison is withdrawn remains with the State. Thus, when the force stationed in Quilon was withdrawn, British jurisdiction in the cantonment ceased therewith, and it became Travancore territory. The Gwalior fort was handed back in 1885 to Maharajah Scindia.

Analogous to this right of jurisdiction in cantonments, but recognised everywhere in international law as an

ambassadorial right, is the right of jurisdiction within the Residency and the grounds attached to it. The Residency is inviolable, and the British Government has invariably treated an attack on it as rebellion. But much more than this happens in actual practice. The areas surrounding the Residency become in practice ' a settlement ' outside State jurisdiction. The extraordinary history of the Residency areas of Indore and Srinagar will illustrate this point. When a Political Officer was accredited to Indore an area of 800 *bighas* (or 400 acres) was assigned by the State for the Residency. By a process of illegal encroachment this original assignment of 800 *bighas* increased to 1,500 *bighas*. A small city has grown up in this area, though the land was allotted solely for the purpose of the Political Officer's residence.[1] The jurisdiction in all matters within this area has been usurped by the Resident, who even refused permission to the State to erect a building as a residence for a European officer of the State.[2]

The case of Srinagar is even more interesting. From Amirakadal bridge to the Gupkar gap lay an area over which the Residency claimed special authority. The Resident in Kashmir claimed that no building, State or private, should be erected within that area—extending over two square miles—without his permission. The exercise of this authority by the Resident was not based on any cession by the State. Owing to the fact that during the lifetime of the late Maharajah the Residency exercised effective supervisory powers on all matters of administration, this usurpation of authority could not be resisted, though the late Maharajah protested against it. Recently the present Maharajah refused to accept these restrictions, and the so-called restricted area is not at the present time subject to any control from the Residency.

In the tracts acquired for the purposes of railway construction the British Government exercises jurisdiction.

[1] Sir T. Madhava Rao's letter dated July 6, 1874.

[2] Recently the British Government restored to the Holkar State jurisdiction over the Residency Bazar.

But the ' full jurisdiction ' granted on these tracts is only for purposes strictly connected with railway administration. This was decided by the Privy Council in the case of Mahommed Yusef Uddin *v.* The Queen Empress (July 7, 1897). The case arose from the arrest on the warrant of a Simla magistrate of a person in the precincts of a railway tract assigned to the British Government in ' full jurisdiction.' The Privy Council held that full jurisdiction was only for the purposes of railway administration, and that for other purposes the territory should be considered as being under the sovereignty of the Nizam. For purposes of convenience it is no doubt necessary that jurisdiction on the railways should be uniform, but there is no reason why the administration of justice should not be entrusted to State authorities. The question is now under negotiation between the Standing Committee and the Government, and it may be presumed that an agreement will soon be reached. When Indian States build railways unconnected with main trunk lines under the British Government, the question of separate jurisdiction vanishes.

Sect. 8 of Act V of 1898 provides that ' the law relating to offences and the criminal procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor-General in Council from time to time directs, extend

(*a*) to European British subjects in the dominion of Princes and States in India in alliance with Her Majesty, and

(*b*) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

The general effect of this section is that both European British subjects and Native Indian subjects of Her Majesty carry with their persons the personal application of, and amenability to, the laws of British India regardless of territorial limitations. But in actual fact this situation is somewhat modified by the later sections of the Act

which deal with extradition. The European British subjects are never liable to be extradited to the States' jurisdiction, but with regard to the Native Indian subjects of Her Majesty a State may, under certain conditions, obtain their extradition, in which event they would be tried by and amenable to the State's law. The conditions under which extradition is granted ensure such persons against being subjected to States' laws which may be different from British Indian laws. Extradition to State courts can only occur on an extradition warrant issued by the Political Agent, and before issuing such a warrant the Act requires him to ascertain whether 'the offence is one which ought to be enquired into in such a State' and whether 'the Act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the schedule hereto annexed....'

The Governor-General in Council has, of course, no right to legislate for the subjects of Indian States residing in State territory. But even in State territory the Indian Legislative Council claims jurisdiction over the servants and subjects of the Crown. The Government of India Act of 1833 (Section 43) laid down that the Council was empowered to legislate for all the servants of the said Company within the dominions of the Princes and States in alliance with the Company. In 1865 this power was further extended to the subjects of the Crown as well as its servants. It was declared expedient to enlarge the powers of the Governor-General in Council by authorising him to make laws and regulations for all British subjects within the dominions of Indian Princes. Even so far as the subjects of Indian Princes are concerned, some legislative power has been assumed by the Government. The Slave Trade Act of 1876 (39 and 40 Vict. cap. 46) enacted that the subjects of Indian Princes committing certain offences on the high seas should be punished as if the offence was committed on British territory. This is evidently based on the principle that

so far as international law is concerned, the subjects of Indian Princes outside their own territory are to be considered to have the duties, obligations and rights of British-born subjects.

In all these matters there has been a clear and undeniable restriction of the rights of Indian States. But since each of these relates either to military or international affairs, a justification may perhaps be advanced that they are indirectly based on the surrender of diplomatic rights which is the one invariable characteristic of all subsidiary treaties. External sovereignty implies the right to accredit and receive ambassadors, to ally or negotiate with any power for specific purposes, and to pursue common ends between a number of States for purposes of trade, defence, etc. As the Indian States have surrendered all these, the exercise of British authority in purely external matters cannot be objected to, and is based on unquestionable treaty rights. But the same could not be said of internal intervention, which has also been so extended as to give the central authority almost unlimited rights.

VII

INTERVENTION IN INTERNAL AFFAIRS

INTERVENTION in the internal affairs of the States has been the fertile ground of controversy and ill-feeling between the Indian States and the Government of India. In the treaties with the sovereign States in India (in this connection the differentiation already made and historically insisted upon from the time of Wellesley to the Chamber of Princes must be kept in mind) there is invariably a clause that the ruler who is entering into alliance with the Company is left ' absolute ' in the affairs of his country. The treaty with the Maharajah of Gwalior stipulates that no officer of the Honourable Company should ever interfere in the internal affairs of the Maharajah's government. The same pledge occurs in the treaty with Holkar, and appears in slightly modified forms in all important treaties. Even in the treaty with the Maharana of Udaipur, which is one of subordinate co-operation and of reciprocal alliance, it is expressly declared that ' The Maharana shall always be absolute ruler of his own country.' The restriction thus imposed on British intervention in the internal affairs of Indian States is most explicit, and has been accepted as binding on the British sovereign in successive royal proclamations. Yet there is nothing more certain than that the Government of India has tended from the earliest days to enlarge its own right of intervention and to reduce the authority of the rulers. Wellesley bore witness to the fact as early as 1806, when he declared that, though the treaties stipulated that the rulers should be independent in all the operations of their internal management,

the door was necessarily opened to the interference of the British Government in every concern.[1] The Company intervened in the affairs of the Indian States for its own profit, as the history of the relations with Oudh traced in an earlier chapter conclusively shows. Even in the States with which the treaty relations were on a footing almost of equality, as with Gwalior before 1843, the policy of the Company was to intervene either to force an annexation or to replenish its empty coffers. In the early days of Junkoji Scindia an attempt was made to induce him to abdicate and to assign his territory to the British Government, and Mr. Cavendish, the Resident, who refused to be a party to this nefarious plot, was accused of having 'allowed a favourable chance to escape of connecting Agra to the Bombay Presidency.'[2]

Intervention, in fact, was the settled policy and was announced as such. Even among nations of equal status and recognised international independence there exists undeniably the right of remonstrance which, when exercised by a stronger power or under circumstances of a difficult character, becomes almost an irresistible interference. Thus, it is well known that the Powers publicly remonstrated against the policy of Austria in Italy, and that this really amounted to internal interference in the affairs of a first-class power. In recent times the action of the King of Belgium in the Congo provided ground for intervention by other powers.

But the interference of the Government of India in the internal affairs of Indian States is not of this nature. It is comprehensive and pervading; it reduces to a shadow the authority of the ruler, and it attempts under the cover of indigenous agency, to assume full sovereign rights, though obviously this is contrary to treaty engagements. Sir George Campbell, an eminent authority, writing in 1852 declared: 'It must be admitted that in our interference with the internal concerns of the Native States we do in

[1] *Op. cit.*

[2] John Hope, *House of Scindia*, p. 28.

practice go much beyond the letter of original stipulations. . . . Whatever the original stipulation, there is, in fact, almost no State with the internal affairs of which we have not had something to do. There is no uniform system, and it is almost impossible to give any *definite explanation of what things we do meddle with and what we do not.*'[1] In a minute of 1860, Lord Canning stated: 'The Government of India is not precluded from stepping in to set right such serious abuses in a native government as may threaten any part of the country with anarchy or disturbance nor from assuming temporary charge of a Native State when there shall be sufficient reason to do so. *Of this necessity the Governor-General in Council is the sole judge* subject to the control of Parliament.' This, adds his Lordship, 'has long been our practice.' Lord Northbrook, writing to the Gaekwar in 1875, claimed the right of intervention in case of misrule, of which the Governor-General in Council is, of course, the sole judge. In fact, it is a known and notorious fact that until recently the intervention of the Resident extended to all conceivable spheres of administration.

The clearest answer to the claim of intervention on the pretext of misrule is provided in a letter from the Governor-General in Council to C. T. Metcalfe, who was Resident in Hyderabad. Writing on December 20, 1822, in reply to a demand from Metcalfe for intervention, Lord Hastings said: 'Paragraphs 4 and 5 plead the necessity for our interposition, because the Nizam does not rule his subjects with equity and prudence. The fact of maladministration is unquestionable and must be deplored. Does that, however, decide the mode in which alteration is to be effected? Where is our right to determine that the amount of the evil is such as to demand our taking the remedy into our own hands? His Lordship in Council observes that the necessity stated is altogether constructive.'

To base the rights of intervention on the minutes of

[1] Sir George Campbell, *Modern India*, London, 1852.

the Governor-General, the memoranda of the Political Department, or upon expressions of opinion by legal authorities in the pay of the Government of India, is to forget that there are two parties in the case whose relations to one another are expressly defined by treaty. Expressions of opinion of the nature of Lord Canning's minute or the circular letter of the Government of India in the Manipur case, therefore have no importance except as showing the mind of the British Government. Ample evidence of this kind is to be found in official documents that the British Government has all along desired to extend its authority in the internal affairs of Indian States. During the weak reign of some ruler or through the agency of a minister nominated by the Resident, the Government interferes in one matter after another, and this broadens from precedent to precedent until the sovereignty of the ruler virtually disappears. Thus, in Travancore, all appointments carrying a salary of above 500 Rs. have at present to be notified to the Resident, though this is a claim which has only been put forward comparatively recently.[1] It is known that in other equally important States the authority of the Resident has grown only by the accumulation of precedents, most of them forced on the ruler in times of weakness.

Intervention is not always in the form of formal correspondence or authoritative insistence. The 'advice' of the Resident is usually an order or a command, and, as there is no limitation of sphere in the matters of advice, it is clear that except in cases where Residents feel it their duty to leave Indian rulers to a large extent to themselves (and such cases are few) their authority is all-comprehending and is often used in manner not consistent with the rights of the ruler. M. Joseph Chailley,[2] a competent and impartial observer, whose book was revised in the original and translated into English by Sir

[1] This claim has now (1932) been abandoned.

[2] J. Chailley, *Problems of British India*, Macmillan, 1910, p. 259.

William Meyer, noticed this tendency, which he describes thus :

> The political officers who reside at their courts are in truth (I reproduce here native opinion which contains a material part but only a part of the truth) *their masters*. That may not be true in the case of the Nizam who has eleven million subjects nor perhaps in the state of Mysore with its five million ; the opposition of rulers of this calibre might be inconvenient and they consequently escape from the annoying control of the political despot. But elsewhere, the attitude of the political officer while ordinarily deferential in form (though even this is sometimes lacking) is the attitude of a servant who directs his nominal master, haughty, polite, impertinent and ironical. And what, say the observers I am quoting, are these political officers save spies whose words will be believed by the English in the face of all outside denial. Once they have pronounced a judgment on any matter, how can the chief appeal against it, save by the difficult and exceptional method of a letter to the Viceroy or a complaint to the Government, and the peoples of the States are not deceived. They know their rulers are thus subject to masters and their attitude takes colour from this.

This picture, as M. Chailley himself points out, contains a material part of truth. All those who have direct experience of Indian States know that the whisper of the Residency is the thunder of the State, and that there is no matter on which the Resident does not feel qualified to give advice. This method of unseen intervention is the ground of constant complaint and friction between the rulers and the Government, and there have been cases where Residents under a sense of pique or from anger resulting from legitimate opposition have visited Princes and rulers with penalties for imaginary offences. The case of the Maharajah of Kashmir, whose first punishment had to be set aside later on ; that of the ruler of Udaipur, whose letter to the Viceroy giving full details of his case created a political scandal ; that of the Rajah of Satara, whose State was annexed on unproved accusations of the Resident ; the high-handed policy of Colonel Macauley in Travancore, which led to military

intervention, and numerous other instances well known in the history of Indian States, can be quoted in support of this.

The veiled dictatorship which has thus been the rule in Indian States has often been exercised through the agency of nominated ministers. This device lent itself admirably to the purposes of the Government. From the early days of the subsidiary alliance till to-day, it has been the main line of policy. Writing[1] in 1817, Sir Thomas Munro enunciated this policy with refreshing frankness in the following words: 'A subsidiary force would be a most useful establishment if it could be directed solely to the support of our ascendancy without nourishing all the vices of a bad government. But this seems to be almost impossible. The only way in which the object has ever been in any degree attained is by appointing a Dewan. The great difficulty is to prevent the Prince from counteracting the Dewan, and the Resident from meddling too much.' How far and how systematically this policy was carried out will be seen from the following incident described in Colonel Briggs' history of the Nizam.[2]

> In this year (1804) occurred the death of Azeemul Omrah the Prime Minister, when the Nizam was strongly urged by the Resident to nominate Mir Alum to the vacant appointment. The Mir had long been known to be favourably inclined towards the British; and as the Nizam's disposition was sullen and discontented, and too fickle to be relied upon, it was rightly judged that any advantage to be derived by the British from an alliance with the Hyderabad State depended in placing its resources under the control of a minister who should owe his elevation exclusively to their influence....

Mir Alum was thus appointed Prime Minister, but there was a strong party against him at court. In order to support the minister who had been thus forced on the Nizam, the Resident had naturally to intervene decisively in all matters. The action taken by the Resident in order

[1] *Wellesley Papers*, p. 795. [2] Briggs, *Nizam*, p. 88.

to get rid of all opposition to his nominee best explains the situation. Mir Alum, on the pretext of paying a visit of condolence to the Resident, left the city and stayed with the Resident. The latter then compelled the Nizam to dismiss the opposition leaders, Ismail ee Yar Jung and Rajah Mohiput Ram, from his court. Thereafter the minister returned to the city and took up his office as Prime Minister of the sovereign he had deserted, and even asked that a force should be detached for the protection of his person. After Mir Alum's death, the Resident procured the appointment of another of his nominees, Munir Ul Mulk. 'The real, though not avowed object,' says Colonel Briggs, 'of the British resident through these negotiations was to effect an arrangement which, while it gave to the Nizam the appearance of having exercised his prerogative of appointing his own Dewan, *left the executive* in the hands of a minister who should be indebted to the Resident alone for his elevation to power and feel that his maintenance in office depended solely on his subserviency to his wishes.' Matters went so far in the Nizam's court that when, during the administration of Chandu Lal, who took his orders from the Residency, the Nizam desired to ask him to furnish certain accounts, the Resident, Mr. Russel, considered it 'undue interference' in the duties of the minister.[1]

It may easily be imagined what the position was in other States when this was the condition of affairs in the premier State of India. In Gwalior the same tactics were followed. When Maharajah Junkoji Scindia died in 1843, Lord Ellenborough insisted on the election of one of his favourites as regent. On the favourite being expelled by the people of the State the Maharani was recognised as regent, but the Governor-General would not recognise Dada Khasaji Wala as Dewan. In the case of Jodhpur the Maharajah was forced in 1868 to enter into an agreement by which it was laid down :

[1] Briggs, *Nizam*, p. 95.

If the Maharajah or the political agent considers the conduct of any minister such as to necessitate his dismissal or a vacancy occurs from any other cause, a successor must be appointed by mutual consent. If an agreement on this point should not be possible, the successor should be decided by the Governor-General's agent who will give full consideration to His Highness's wishes.

In Cochin, Dewan Sankara Warriyar was a tool in the hands of the Resident, whose clerk he was before becoming Dewan, and during the whole of his term he took orders from the Resident and invited the British Government's intervention against his own Rajah.[1] From the time of the Travancore rebellion (1809) up to the time of Sir T. Madhava Rao (1856), the Dewans of Travancore were invariably the nominees of the Resident, and generally clerks and other low officials who had served under him.

The relations between the Indian rulers and the Residents at their courts have always been of a peculiar nature. Nominally advisers, the Residents, as M. Chailley points out, were in the past really masters, and the treatment meted out by the Residents to the rulers was often rude and extremely provocative. This was noticed by King Edward himself when he travelled in India as Prince of Wales. Writing to Queen Victoria on November 14, 1875, the Prince said :[2] 'What struck me most forcibly was the rude and rough manner with which the English political officers (as they are called, who are in attendance on native chiefs) treat them. It is indeed much to be deplored and the system is, I am sure, quite wrong.' Another English observer, Mr. Sidney Low, noticed the same thing. 'The Rajah,' says he, 'feels that his brain is at least equal to that of a middle-aged, middle-class colonel, and he is quite aware that the diplomatist is nobody in particular when he goes back to his own country.'[3] The result is that things do not

[1] *Cochin State Manual*, Ernakulam, 1911, pp. 170, 171.

[2] Sidney Lee, *Life of King Edward*, p. 399.

[3] Sidney Low, *A Vision of India*, p. 136.

run smoothly, and there is always friction between the Residency and the Palace.

In more recent times the policy of the Government has been almost invariably to 'lend' British officials as Dewans, who naturally have their eyes on promotion in British India and on rewards in the form of British honours, and are inclined to look on the maintenance of British rights and the furtherance of European interests as their first duty. Until recently a large proportion of the high appointments in most States were held by loan officers of this kind, with the result that a peaceful penetration of British authority has been vigorously pushed forward.

The veiled dictatorship which the British Government exercises over the States shows itself also in the control of legislation and the authority reserved by the Government to hear direct petitions from the subjects of States. In some Indian States important legislation cannot be undertaken except after previous consultation with the Paramount Power. In Cochin, a Religious Endowment Bill which was publicly announced and on which definite action was taken by the administration, had to be given up owing to refusal of sanction by the Government. The right of petition to the Agent of the Governor-General is often grossly abused by the political officers. In a recent speech His Highness, the present Maharajah of Bikanir, openly stated that the Residents at one time often asked for explanations on the petitions of dismissed constables. In fact one Political Agent wrote as follows to the Maharajah: 'I consider a Political Agent who merely forwards every petition he gets to the Durbar for disposal and never tries to find out what the facts are is not doing his work and earning his pay.' This invidious form of intervention was at one time carried to most extraordinary lengths, and is even now to some extent a serious menace to the autonomy of the States.

Besides this normal method of intervention the British Government has usually looked upon minority adminis-

tration as an opportunity for assuming or extending control. During temporary administration of this kind, extensive concessions used to be given to British companies, agreements were entered into for the alienation of permanent rights, as in the case of Alwar and Bikanir, whose separate coinage was abolished at the time of the regency, and fundamental alterations of constitutions were undertaken, as recently in Travancore where, under instructions from Simla, the Maharani was forced to separate religious administration from secular. In 1877, when the Maharajah of Bansda was a minor, the Agent to the Governor-General wrote that 'as custodian of the rights of Bansda Rajah' he would recommend that a particular village should be sold outright. He added: 'We have authority to finally dispose of the matter now, and can do it more satisfactorily now than it will be possible eight or nine years hence.'[1] A Political Agent, Khandesh, added: 'If Bebabari be bought up by the Government now, it will, of course, permanently form a minute item of British territory in the midst of the Rajah's territories.'[2] The way was paved for encroachment and intervention. Gwalior, Jaipur, Mysore, Travancore, Baroda, Indore and most of the other States of India, have felt at one time or another the effects of this method. Much resentment, naturally, has been aroused among the Princes on this question. Sir Robert Holland, in an important letter to the Princes of Rajputana, dated March 27, 1920, stated: 'Practices now perceived to be iconoclastic and subversive of tradition were initiated, though with the best intentions, by officers in charge of minority administration.' Since the Minority Resolution of 1917, this practice has to a large extent been given up.

There are just and legitimate occasions of intervention, both in the exercise of paramountcy and for the purpose of maintaining a minimum standard of civilised government. Nor can it be questioned that in such matters as disputed succession, rebellion in the States, or breakdown

[1] Letter dated July 20, 1877. [2] September 12, 1877.

of law and order, the supreme Government has every right to step in. But the intervention of the Government of India, though on some occasions directed towards the establishment of humane and just regulations or in support of popular rights as against the misgovernment of a tyrannical ruler, has often been undertaken in the interests of British trade. The quarrel with Mir Kassim is well known. The Punjab Government threatened action against Kashmir for not reducing certain duties which the State had imposed on articles that passed through Ladak. The Secretary to the Government of the Punjab, writing to the Commissioner of Jullunder, stated on behalf of the Government as follows :[1]

> But should His Highness the Maharajah fail to establish satisfactory arrangements at Ladak for the due encouragement of trade passing through that portion of his territory, the Lieutenant-Governor will be quite prepared to recommend to the supreme government that a British Officer of rank and position be stationed at Ladak for a season.

Intervention is sometimes undertaken rather for the political advantage or the trade interests of the British than in the interests of the people or the State. Lord William Bentinck as Governor of Madras wrote to Lord Wellesley that the ' exigencies of the Rajah of Travancore ' afforded a favourable opportunity for intervention with a view to modifying the subsidiary alliance. It is notorious that intervention in Kashmir in 1889 was due to the desire of the Government to get political control over Gilgit. It is intervention of this kind that has made the rulers of Indian States look upon Residents not as friendly advisers but as hostile agents against whom one has to be on guard. It is the same knowledge that has made all malcontents in the State look upon the agent of the British Government as the person to appeal to over the head of their own ruler. For the unpopularity of the

[1] Letter from T. H. Thornton, Secretary to the Government of the Punjab, to T. D. Forsyth, C.B., Commissioner of Jullunder, No. 827, dated 1860, quoted in Lucullus Kashmir Raj.

Resident in Indian States this false historical tradition is responsible.

Intervention between a ruler and his feudatories has been another source of friction. The past policy of the Government of India was to support the feudatories in the States against the exercise of authority by the rulers. The Jareeda Bhayats of Cutch, the Bhoomias of Udaipur, the Bhayats of Kathiawad and other special classes of *jagirdars* found in the political officers attached to the courts of their suzerains willing support in their fight against the claims of the sovereign authority. Besides this effort to encourage recalcitrant *jagirdars*, the political agents also followed a policy of upholding against well-established practice and often their own previous admissions all claims of independence by chiefs who were subordinate to another State. The leading examples which may be quoted in this connection are Jaora, Kichilpur and Sitamau. Jaora is a feudatory of Indore. It was recognised as such until quite recent times, and there are numerous admissions to that effect by the British Government itself. But now the claims of Indore are considered formal and nominal, and Jaora is recognised as an Indian State in its own right. Similar are the cases of Sitamau and Kichilpur in their relations with Gwalior. An attempt was made to separate Poonch from Kashmir, and at one time an assistant Resident to Poonch was appointed. Now, however, Poonch is recognised by the British Government to be no more than a *jagir* granted by the Maharajah of Kashmir.

As a result, no doubt, of the organisation of the Princes for common action, the attitude of the Government with regard to intervention in the purely internal affairs of the State has of late changed considerably. The differentiation between sovereign and non-sovereign States—those in which the policy of intervention is expressly repudiated in treaties and those in which it is authorised—has been emphasised. This differentiation, as we have shown, is historical, but, as Lord Chelmsford himself recognised, it

has been forgotten. The attempt to class States enjoying full rights of internal management with minor States which have no criminal jurisdiction and the rulers of which have undertaken loyally to obey the advice of the Resident, has been fruitful of much trouble. The determination of the extent of legitimate intervention in States can only be made on the basis of a classification of States. A codification of practice would then be possible, and the Government of India would be freed from the accusation, now made freely and with justice, that neither the express stipulation of the treaty nor the solemn assurance of the sovereigns of Great Britain could guarantee the Princes of India against undue and unauthorised interference from the Political Department.

VIII

POLITICAL PRACTICE

THE final territorial form which the Indian Empire took as a result of the assumption of sovereignty by the Crown and the definite abandonment of the principle of annexation was a division into two unequal portions. On the one side was British India directly administered by the Crown ; on the other were the numerous Indian principalities differing in area, in population, in revenue, and, what was more, in the extent to which they enjoyed sovereign rights. By virtue of the treaties concluded with the States the British Indian Government claimed certain rights of paramountcy, which, when put at the lowest, extended to the control of defence, external relations, and the right of arbitration in the cases of disputes, while a liberal interpretation extended it, as we have seen in the last chapter, to a supervisory control over the entire field of internal administration. The States, on the other hand, claimed with justice that their treaties left them sovereigns and that paramountcy was only a status which gave the British Government certain defined rights and at the same time imposed upon it definite obligations.

The period that followed the assumption by the Crown of the direct government of India was one of administrative expansion. At that time neither of these conflicting theories would have fitted the situation. The enunciation of a paramountcy by divine right would have alienated the Princes, whose position had not become altogether helpless from a military point of view. The acceptance of the view that paramountcy was only a status and did not confer any political rights beyond those which were warranted by the clauses of the treaties,

would have rendered a policy of expansion impossible. Moreover, it soon became evident that a body of rules to regulate the working relations between the States and the Government of India and between the States themselves was an urgent necessity. As long as these States were treated as independent entities liable to annexation, or left altogether to themselves according to the fancy of the Governor-General, such a codified procedure could be avoided. The pre-Mutiny period, in fact, witnessed a chaotic inconsistency in the practice of the Government of India towards the States. But after the Mutiny, when the whole of India came, in Lord Canning's phrase, to be considered as ' a single charge,' it was obviously necessary to act on some general principles.

Out of this necessity arose what is now styled Political Practice.[1] This is a curious combination of usage, executive decisions, and temporary expedients, which in course of time acquired sanctity in the eyes of political officers. A political officer of high standing, Sir Lewis Tupper, was specially deputed to enquire into the relationship of the Indian States with the Government, and on his report the Government issued a confidential handbook which is the secret Political Law of India.

Tupper's views, as mentioned earlier, were the product of a mind imbued with the theories of feudalism. But the origin and historical position of Indian States did not in any sense support such a point of view. The history of the States was therefore re-examined, and another distinguished officer was entrusted with the task of bringing out an authoritative edition of the treaties with suitable historical narratives attached to each State. Though these narratives were completely one-sided, the Government of India at one time went to the length of declaring that they were authoritative and should not be contested by the States. It would seem that even with regard to the history of the States the Government of India was the sole and unchallenged authority.

[1] See *Evolution of British Policy*, Lecture IV.

It is perfectly clear that the treaties with Indian States could not in any case be considered like the laws of the Medes and the Persians, incapable of modification in the smallest detail. There must be for every instrument which by its very nature creates mutual rights and obligations some process by which to adjust them to changing conditions. The legitimate and obvious course for such modification would have been by agreement between the contracting parties. But the political authorities in India thought that they had discovered, in their view of paramountcy, a suitable machinery which could improve and modify the treaties without resorting to the cumbersome process of separate negotiations with each State. In fact their experience of separate negotiations with States had not been wholly satisfactory from their point of view. The love of a bureaucracy for uniformity revolted against the diversity which was inevitable in the case of separate agreements, and the use of paramountcy for securing the modifications of treaties was the result of this feeling.

There was a twofold purpose in the evolution of political practice, and it is necessary to keep it in view in discussing the question. The first was the aggrandisement of the central authority of the Government of India, and the second was the development of common institutions. The former meant the conversion of the Government of India from an ally to a suzerain, a superior authority whose decisions could not be questioned and whose advice the States were bound to follow. The latter meant the creation of all-India services, the Indian railway system, a common coinage, an all-India post, etc. In short, the purpose of the practice that was evolved was the political interpretation by a superior power in its own favour of economic and social conditions which were fast uniting India.

The political practice that was developed was a curious amalgam of imperial *ukases* (styled ' Resolutions '), usage evolved in certain States and applied uniformly to all,

sufferance, precedents of decisions and claims of paramountcy contained in official pronouncements. Each of these deserves close scrutiny.

Official statements which are said to have the validity of decisions with regard to the States are numerous. Two typical cases may be taken and studied for our purpose. The Government of India issued a Resolution on July 8, 1866, declaring that ' every State is responsible for the safe passage of Government posts and parcels mails through their territory.' Detailed rules were laid down regarding the realisation of indemnity, the estimation of losses, indemnification in cases of death, etc. The States were told that no exemption would be allowed for the value of gold, silver, jewellery, etc., and the rulers were threatened that, if robbery occurred as a result of insufficient police protection, the States would have to increase the police or the British Government would do so on behalf of the States.

The object of the Resolution was no doubt unexceptionable. In all civilised countries the protection of mails is a fundamental necessity. But the arrangement was entirely one-sided. As the Begum of Bhopal pointed out at the time : ' It is not clear what arrangements will be considered sufficient, what increase in the number of guard accompanying the mail is desired, or the manner in which the armed guard is supposed to go with the mails.' The States were not consulted nor their consent obtained before this Resolution was issued. There is no obligation on the part of the States not being consenting parties, to act in accordance with this Resolution. Nor is the Government entitled to legislate in this manner for the States. But the tone of the Resolution is sufficiently indicative of the change in the attitude of the Government of India. It is an order which no State could afford to disobey, although its provisions were clearly unjust.

A second practice enforced in the States by a procedure of this kind is with regard to the exercise of jurisdiction by the States over British Indian officers. The Govern-

ment of India notified the States 'that by this law of British India all servants of the King are amenable to British Indian jurisdiction for offences committed in the territories of an Indian State.' But that assumption of authority cannot oust the jurisdiction of the State Courts.

The practice thus sought to be enforced is against known principles of jurisdiction. 'It is and it must be perfectly clear by the law of all nations that each person who is within the jurisdiction of the particular country in which he commits a crime is subject to that jurisdiction.'[1] The assumption of authority over one's own subjects in another State cannot in any case exclude the jurisdiction of the *locus delicti*. The Indian Legislature, it is true, gave jurisdiction to *British Indian Courts to try such offences*; but the legislature of British India does not claim to have the right of restricting the jurisdiction of Indian State Courts. Although, therefore, it cannot be pretended that the Courts of the States have no jurisdiction, yet the British Government has by this executive order restricted the right of every State in India to try even the menials attached to British institutions. Numerous cases have arisen in recent times when the Political Officers have interfered on the basis of this restriction.

Usage as a source of political practice is less open to criticism than the unilateral method of issuing orders and resolutions. Though it may be true in a legal sense that usage by itself is sterile and cannot be a source of political rights, in actual practice among nations usage counts for a great deal. But usage has its strict limitations. To be valid it must have, as Bryce points out,[2] 'a certain extension in Time and a certain extension in Space. It must have prevailed over so long a period that no one can deny its existence. It must have prevailed over so wide an area ... that it cannot be alleged that it is

[1] Rex. *v.* Ganz (1882, L.R. 9, Q.B.D. 93).

[2] Bryce, *Studies in History and Jurisprudence*, Oxford, vol. ii, 'Roman and English Legislation,' p. 673. Quoted in *Butler Report*, p. 24.

merely a local usage.' These limitations were in theory accepted by the Government of India as early as 1877. The Government declared that ' in the life of the States as well as of individuals documentary claims may be set aside by overt acts : and a *uniform and long course of practice* acquiesced in by the party against whom it tells, whether that party be the British Government or of the Native States, must be held to exhibit the *relations which in fact subsist between them.*'

So far as the States are concerned, there are three further restrictions which are of importance to the validity of usage. No usage which originated either under or during a ruler's minority or during an administration in which the British Government was the effective authority could be considered binding on the State.

During minorities the authority in the State used to be exercised often directly by the Resident and in general under his supervision. If a usage grows up at that time which adversely affects the State, that usage cannot be considered valid and no claim of right can be based upon it. Similarly, when the ruler's powers are restricted and the effective authority in the State vests with the Resident, any usage adverse to the State which was developed at that time, cannot bind the State. The British Government on such occasions stands in the position of a trustee, and it is a universally accepted maxim that a trustee can derive no benefit out of his trust. Much of the usage that the Government of India now rely on was developed under these special conditions. In Kashmir, the late Maharajah Sri Pratap Singh was deprived of his powers in 1889, and from that year till 1922 the State was administered under the orders of the Resident. During this period of Residency Administration there grew up many usages which curtailed the rights of the State. For example, the right of the State to try British Indians, which was guaranteed by treaty, was taken away by a letter from the Residency in 1894 and a new procedure was substituted for it.

Again, usages which go against the express provisions of a treaty cannot be considered valid. The legitimate sphere of usage is the undefined area in the relationship between the States and the Government. Where that relationship is clearly and explicitly defined no usage can develop contrary to it. In many States, however, such usages are enforced by the Government.

Lastly, a usage which is developed validly in one State cannot for that reason be held to be universally applicable. Usage, by its nature, must develop in some State. However important that State is, it cannot on that account be held to be valid in the case of all other States. It is recognised that the relationship of each State with the Government of India is based on the special circumstances of its treaty, local traditions, and any special usages that might have been developed in relation to that particular State. The States cannot for any purpose be treated as a whole, as if each had the same rights and the same privileges and were subject to the same obligations. Therefore, usage cannot be a source of general rights in any circumstances, and the failure of the Government of India to recognise this important consideration has been at the root of much trouble in the past. Sir Robert Holland frankly recognises that precedents evolved under special circumstances in individual States were declared without proper scrutiny or due consideration to be applicable to States as a body.

A different source of what is termed the Political Law of India is the precedents of cases decided by the Political Department in an executive capacity. This is a kind of case law and should be differentiated from usage, discussed above. The decisions of the Government of India in matters of a justiciable character arising between the States *inter se* and between a State and a group of States and the Government of India are held to constitute a body of inter-statal law which the Government in its executive capacity is entitled to administer in similar cases. It is obvious that there is some justifica-

tion for the development of a body of law which can be administered impartially in the case of disputes, especially when the Indian family of States is so large and so quarrelsome. But it is equally obvious that if a body of law is to be administered it cannot and should not be considered a secret set of rules not available to the parties concerned. Nor is it justifiable that the administration of such law should be entrusted to an executive body which is often a party to the controversy.

Sufferance as a source of political practice is akin to usage. Apart from the consideration already discussed in that connection, there is one further point which needs emphasis. When the State which claims political rights on the basis of sufferance is also the Paramount Power entitled to dictate the course of action for the other States, sufferance becomes merely the acceptance of superior power. The political helplessness of Indian States affords them no alternative but to acquiesce under protest in any course of action that the Government of India may enforce. If such acquiescence were considered as being a source of rights on the ground of sufferance, then it would amount to the Government of India deriving rights against others through its own action.

The widest inroads into the rights of Indian States were made not by the methods of usage, sufferance or precedents, but by too wide interpretation of the theory of paramountcy. That the British Government is paramount in India no one can deny. That this paramountcy vests in the Crown certain rights over the States is also true. Its true character and implications have already been discussed in a previous chapter. For our purpose it is only necessary to examine the claims of paramountcy as a source of political law. Paramountcy is in essence an exceptional use of political authority in the interests of a State or pursuant to the obligations which the British Government has undertaken by virtue of treaties. It is a power which is wholly inoperative in the case of everyday disputes such as are normal between states every-

where. As such it cannot be the source of any usage, practice or precedent, for any exercise of paramountcy is an act of state which cannot create a precedent. And yet it is claimed that paramountcy can impose obligations on the States and create rights for the British Government. In the sense, however, that the exercise of paramountcy is governed by certain general principles and considerations, it is true that in regard to *itself* the Government can deduce a code of political practice. The formulation of such general principles the Princes, no doubt, would welcome. But apart from this no political practice can originate from paramountcy, though it may be the ultimate sanction of all practice.

The codification of political practice has long been demanded by the Princes. The Government saw the justice of the demand and circularised the States for a frank statement of their case against the Political Department for breach of treaty obligations. The answers received from the States were analysed and classified. Thus arose the famous Twenty-three Points, on which codification is now being attempted. The Codification Committee met at Simla on September 22, 1919, and the Princes who were nominated to the Committee placed on record a note in which they emphasised the point ' that the treaties between the British Government and the Indian States provide the sole test of the latter's rights and the only correct standard for judging the obligations of the former.' They added ' *that no laches*, lapse of time, or the growth of any practice in which the Princes had no voice can be admitted to modify the original relations of the States with the British Government as deducible from the treaties, much less to render those treaties obsolete.' They held the view that the structure of political practice can rise only on the foundation of the treaties, and that its mass and design must be determined by that foundation. While expressing their willingness to co-operate with the British Government in revising political practice, they declared that nothing in such

negotiations or any arrangements arising therefrom should be regarded ' as modifying, impairing, or infringing in the slightest degree ' any of their treaty rights.

When the Standing Committee of the Princes was constituted the work of codification was entrusted to that body to be done in consultation with the Political Department and its experts. The principle adopted in codification was that each subject should be separately dealt with on the basis of maximum agreement. From the very beginning the Committee discarded the idea of drawing up an ideal code of inter-statal law and confined themselves to the more practical method of codifying the existing practice after necessary modifications to suit the point of view of the Princes. The most important result achieved, though this was before the Codification Committee was actually constituted, was the Resolution on Minority Administration, which has been discussed in some detail in a previous chapter. Other subjects on which agreements have been reached are (1) the employment of Europeans in the States, (2) the settlement of boundary disputes, (3) the assessment of compensation for land taken from the States for irrigation, navigation, embankments, etc.

The codification of political practice on the basis of agreement would greatly help to regularise the position and to define the rights of the States in relation to the British Government. The existence of a vast body of usage and practice, the extent and validity of which are not known to the Princes, has been a source of great trouble to them in their government. The codification of this practice creates a system of inter-statal law which is helpful to the Princes and necessary in the interests of India for the adjustment of the ordinary relations between British India and the States.

IX

ECONOMIC PENETRATION

ATTENTION has so far been confined to the political penetration of the States by the central authority, but even more obvious than this, and causing much greater loss to the States, has been the economic penetration of the Princes' dominions and the exploitation of their natural resources in the interests of British Indian revenues. This policy began to manifest itself as soon as the political domination of the British in India became clearly established. With the abandonment of its commercial activities, the Company became interested in the development of India as a market for goods and as a producer of raw material. The difficulty that stood in the way of the organisation of India as a great market for British goods was the interspersing of British India with the territories of Indian rulers. Before 1845 the hinterland of India was occupied almost entirely by Indian States.

The direct sovereignty of the Company was confined to the coastal areas and to the fertile valley of the Ganges. Oudh was still an independent State, Berar was still under the Nizam, the Punjab was a sovereign State, and in the direct line of communication between Agra and Bombay there was hardly any large stretch of territory that was wholly British.

There were two alternatives open to the Government of India at the time if a forward trade policy was to be followed. Either the States could be treated as inconvenient blocks of foreign territory which stood in the way of the commercial and economic possibilities of India, or

they could be treated as allies through whose co-operation a common economic policy could be evolved. The first involved the idea of annexation whenever suitable opportunities arose in order that these obstacles might be removed and India be economically developed as a British market. The second involved economic penetration and economic subordination, which the Princes would have strenuously resisted at the time.

The desire for acquiring Indian sovereignties which lay interspersed with British territories, obstructing the line of communication, was at the bottom of the annexation policy followed from 1830 to 1857. In fact Dalhousie did not disguise the economic policy behind his annexations of Indian States. In his despatch dated February 28, 1856, the Governor-General justified his acquisition of Berar from the Nizam on the following ground :

> In the possession of Berar and its neighbouring districts the British Government, it deserves to be remembered, has *secured the finest* cotton tracts which are known to exist in all the continent of India and thus has opened up a great additional channel of supply through which to make good a felt deficiency in the staple of one great branch of its manufacturing industry.[1]

This policy came to an end with the Mutiny. The second alternative of treating the States and British India as being ' a single charge ' for purposes of economic development came to be accepted as the official policy of the Government in the period which followed the Mutiny. This gave a new complexion to the claims of paramountcy and involved a straining of central authority for the purpose of securing a unity in policy with regard to such vital questions affecting the economic development of the States as the building of railroads, canalisation, customs, currency, salt and opium.

The political aspects of this new interpretation of paramountcy, based on the untenable pretensions of a derived Moghul authority, on vague theories of feudal

[1] Arnold, *The Administration of the Marquis of Dalhousie*, p. 119.

suzerainty and the uncontested fact of predominant military power, have been analysed elsewhere. The economic effects of this policy of treating India as a single charge and the inevitable encroachments it led to on the guaranteed sovereignty of the States now deserve special attention.

It was in order to push forward the railway policy of the Government that this new theory of paramountcy was first applied. The main lines of traffic in India pass through many jurisdictions. The rulers were compelled to provide the land and timber and other materials available in their territories free of cost for the construction of lines which were to be owned and worked by the British Government or by British companies. The more important States were made to lend to the Government of India large sums of money. The motives of the Government in constructing the main railway lines were undoubtedly those of military control. As a result, the main lines have not been of any great commercial advantage to the States. Even in the case of commercial railways the alignment of the tracks did not follow the trade routes in the States, but was dictated mainly by the desire to connect centres of commerce and industry situated within British India. The result was that the old centres of trade gradually declined and the economic life of the States underwent great dislocation. Again, the rates on these lines were framed without taking into consideration the interests of the States. Furthermore, when the railways were built the States were assured that economic prosperity would follow, and on that ground they were persuaded to abandon their transit duties. Not only did the prosperity which was promised fail to materialise, but as a direct result of the railways, laid down without consideration to economic development, the States suffered from great dislocation of transit. The surrender of transit duties was also a sacrifice, for which they received no return.

Not only have the States advanced capital and in other

ways materially contributed to the building up of the railways, but a considerable share of the earnings of the railways is drawn from the States, both in goods and passenger traffic. Yet the railways are considered as belonging exclusively to British India, and the benefit of unification has been secured at the expense of the just economic rights of the States.

In the matter of their own railway lines the States are also subjected to unjust restrictions. They are not free to lay out, construct or work railways according to the economic interests of their own States. They must follow the directions of the British Government in all these matters. Naturally, the Government is anxious that their own lines which run through the States should not suffer loss. The result has been that the economic development of the States has been hampered.

Another matter that has grievously affected the economic life of the States, because of the desire of the British Government to unify India, is the currency policy. As we have seen in a previous chapter, the Government of India secured the assent of most of the States to the abolition of their separate currencies. Generally speaking, the local currencies were abolished while the British Government was in charge of the administration. The argument put forward was that unification of the currency system was necessary for the economic development of the whole of India. If the surrender by the States of their rights of coinage was in the common interests, clearly they are entitled to a share in the profits. That, however, is not the case. The profits of paper currency and the seigniorage on the metallic currency are exclusively appropriated by the Government of India. The position is peculiar in this sense, that the States which refused to surrender do not suffer any loss, while those whom the British Government persuaded on the plea of all-India interests are now being penalised for their desire for the commonweal.

It is in the case of salt and opium that the injustice

resulting from the economic interpretation of paramountcy becomes most glaring. As early as 1829 the Government of Bombay began to interfere in the production of salt by the Radhanpur State. In 1829 the salt works of that State were made the joint property of the Durbar and the British Government. In 1837 the Government of Bombay suggested that the entire salt works of the State should be surrendered for a money compensation. In the post-Mutiny period the Government became interested in the creation of a salt monopoly, as it was considered that salt was the most easy commodity to tax. But this was not an easy matter to achieve. Some of the most important areas of salt production were in Indian States, and unless either the Government could acquire these salt works or force the States to close them down, there was no prospect of establishing a monopoly. Hence in 1870 the Government of India began to negotiate salt agreements with the States and to acquire from those States which produced their own salt the sole right to manufacture and sell it. The State of Cutch, for example, was asked by the Political Agent to take effective measures to stop the exportation from Cutch by land or by sea of salt manufactured or spontaneously produced in the State, to open no new salt works, and to agree to have a British agent stationed at Cutch to see that this agreement was carried out.[1] The Regency Council which was then governing the State protested, but the Agent wrote to say that he had been directed to inform the Council that the Government had already instructed him to carry out the arrangements proposed, which had not so far been agreed to by the Council. The Regency vigorously protested against this high-handed action, pointing out that the arrangement which the Government had decided to put into operation would inflict a crushing blow on the poor salt traders, bring about a decline of the trade in pottery wares, ruin the trade with Africa,

[1] Enclosure to Letter No. 448, dated September 17, 1879, from Mr. H. N. Reeves, Political Agent, Bhuj.

adversely affect shipping and completely paralyse the shipbuilding trade. The prospect of increased revenue in British India made the Government of India deaf to all reason. Cutch was coerced into an acceptance of the salt monopoly on a very inadequate compensation.

In Porbandar the procedure followed was still more autocratic. In 1879 Mr. Carey, the Collector of Salt Revenues, Bombay, demanded that the administration should hand over to the British Government all control over salt works and resources, whatever they might be, or it should raise the price of salt to the level prevailing in British territories and consent to the guidance and supervision of salt manufacture by officers of the British Government. The Kathiawad States were forced to accept the British monopoly and to surrender their salt resources.

It will be seen that even where there are salt agreements these were forced upon unwilling States in the unjust exercise of paramountcy. The economic motive was the increased revenue which the monopoly would give to British India, although the Paramount Power knew that this increased revenue resulted in the ruin of the salt industry in many important States, and was in other cases derived from an indirect taxation of the subjects of the States. The injustice of the course on which the Government of India embarked was frankly recognised by the authorities in British India. Sir John Strachey, who, as Finance Member, was responsible for this policy of salt monopoly, stated: 'As an unavoidable consequence of the new system [of salt monopoly], and one without which the relief our own subjects would have been impracticable, the people of the Native States in question became generally liable to the payment of the British Indian salt duty.' [1]

The position as regards salt, as it stands at the present time, is as follows: The Government of India derives over 6 crores of rupees from salt tax. Of this sum it is estimated that over 1 crore and 38 lacs are con-

[1] Strachey, *Finance and Public Works of India*, 1882, p. 226.

tributed by the States. Even if the compensation paid to some States is deducted, the compulsory contribution levied from the people of the States amounts to no less than 90 lacs of rupees. Besides this direct loss of revenue, the States have been made to pay heavily in the shape of ruined industries, salinated soils, refusal of water supply for irrigation, etc.

The opium policy of the Government displays an equally determined effort to aggrandise the economic interests of British India at the expense of the States. The Moghuls had established a monopoly in opium, and from this source the Empire had derived a large revenue. In the territory of Bengal, Bihar and Orissa, Warren Hastings revived that monopoly, and the system was gradually extended to new territories as they came under the Company. The East India Company traded largely in this drug with China, where it was found that Malwa opium was a serious rival to the Company's product. The cultivation of opium in Malwa dates from very old times. The *Ain-i-Akbari* (1590) states that opium was the staple product of Malwa.

In 1803 a law was enacted prohibiting the export of Malwa opium from Bombay ports. As this measure did not meet with success, agreements were proposed with Baroda, Indore and other States prohibiting the sale of the drug and its transit through the States, and requiring it to be made over at a fixed price to the British Agent at Indore, who was to buy up the whole crop and send it to Bombay for sale at a profit. Even this policy had to be abandoned in regard to the bigger States, though Gujerat, Kathiawad and Cutch still came under the prohibition.

The difficulty of enforcing a British monopoly lay in the fact that Malwa opium produced mainly in Indian States was superior in quality. In 1826 the Government of India managed to persuade Indore, Dhar and Dewas to agree to sell to the Company the entire opium produced in those States. But as Gwalior, which is the

biggest producer of Malwa opium, refused to yield, this policy had also to be given up. In its place the Government of India, in 1829, decided on imposing a ' pass duty ' of 175 Rs. per chest on all ' foreign ' opium passing into British territory. This was nothing less than a transit duty, and its purpose was to counterbalance the deficiencies of the Company's opium. As to the injustice of this impost, which rose from 175 Rs. per chest to 1,200 Rs. and was manipulated for revenue, it is sufficient to say that under this system the opium grown in the States was placed at a great disadvantage, as the opium produced by the Government of India paid no pass duty. In 1893 a Royal Commission was appointed to go into the whole question. Their opinion was that the Government of India was not to be entitled to deny the right of transit to the States. ' We are aware,' they said, ' that it has been suggested that the present arrangement for the transit of Malwa opium to the sea might be ended without direct interference on the part of the Government of India by an enhancement of the Pass Duty up to a point that would be found prohibitive ; *but we consider it sufficient to say that the consideration on which our general conclusion is founded would in our opinion be equally valid against any such indirect method of extinguishing the export trade.*'

In 1908 a Convention was signed with China by which the market became closed to Indian opium. The Government of India did not consult the States, who were large producers of opium, though the Convention was declared to be binding on the States. The States were told that they would have to make a sacrifice of this revenue.

We have pointed out how the State of Cutch brought to the notice of the Government the incidental losses which fell on that State as a result of the salt policy of the Government. In the case of opium the Gwalior Government, when asked to restrict its production, drew attention to the economic distress that would result from such a policy. ' The feeling of distress is shared alike by

the *Zemindars*, opium merchants, money lenders, artisans, field labourers, village menials, etc., the disappearance of opium meaning to them nothing short of ruin. The number of such people may be approximately put down at one half the total population of Malwa.'[1] The probable losses resulting from this policy were analysed in detail by the Durbar. It was further pointed out that this restriction of the cultivation of opium would seriously cripple the finances of the State.

The States naturally suffered heavy losses as a result of the Convention with China, but the Government of India felt no concern. Even at this stage the pass duty was raised. Though the trade with China ceased, the States were not allowed a fair share in the other opium markets. The result has been that while the Government of India has refused in any way to relax from its own position as a monopolist in opium, it has ruined poppy cultivation in Malwa, crushed the trade by the imposition of a heavy pass duty, and seriously dislocated the finances of the States—all this in the interests of the revenue of British India.

The present policy of the Government of India presents an interesting epilogue. It is suggested to the States that they might purchase the inferior Bengal opium at the monopoly price of the British Government and abandon completely opium production in their own States. It is impossible to conceive a more unreasonable proposition.[2]

The attitude of the Government of India in the matter of income tax is another example of the desire to exploit Indian States for the benefit of the British Indian exchequer. The Government of India deduct income tax on all incomes originating within their territories. No exemption is granted by the Government of India either

[1] Strachey, *Finance and Public Works of India*, 1882, p. 226.

[2] Letter from the Political Secretary to the Resident, dated September 22, 1908. It may be added that in 1928 the Government of India appointed an Opium Committee.

to the States or to the State subjects for income derived in British India. Some of the States, notably Baroda, Travancore and Mysore, have their own income tax. These States have either to tax the incomes of their subjects originating in British India which have already been taxed, or they have to forego a large source of revenue. This problem of double taxation is one that has been considered in all its aspects by an expert international committee consisting of Professors Bruins, Einandi, Seligman and Sir Josiah Stamp, who came to the following conclusion : ' On the subject of income taxation in its developed form the reciprocal exemption of the non-residing is the most desirable method of avoiding the evils of double taxation and should be adopted wherever countries feel in a position to do so.'

The injustice of the present system of taxing the residents of Indian States who derive their incomes from British India becomes all the clearer when we remember that foreign holders of Indian securities are exempted from the tax. Thus the residents of Indian States have a double economic allegiance, and are forced in the interests of the central finances to pay tax where others are exempted. Even the administrations of the States are not free from this taxation. The Kashmir Government has to pay British income tax for the proceeds of their timber sales from a depot established in British India. If conversely the State were to charge income tax on the profits of one of the imperial departments operating in the State, such an action would no doubt be considered an interference with paramountcy.

The main problem affecting the economic relations of the States with the Government of India is that of customs duties. Here, also, there is no uniformity of treatment. The frontier State of Jammu and Kashmir is entitled not merely to enforce its own customs duties, but by a special treaty negotiated in 1870 receives in full the duties collected at British ports on goods imported into that State in bond. With Hyderabad, also, there is a special

treaty by which, in exchange for a free transit of goods to the State, the Nizam's Government abolished the *rahdarri* or internal duties and agreed not to charge more than 5 p.c. as export or import duty. But the extraordinary thing with regard to Hyderabad has been the refusal of the British Government to give effect to the condition of free transit of goods to Hyderabad. While Kashmir thus gets the benefit of a refund of duties on goods imported in bond, goods imported into Hyderabad have to pay the transit duty at British ports. The maritime States of Travancore and Cochin are bound by the inter-portal Convention by which these States are given a nominal compensation for abolishing their import duties, except on certain specified goods. The British Indian import duties are in force at the Travancore ports.

The question of customs duties should be looked at from two different angles : from that of maritime States and from that of internal States not having a seaboard. The British Indian Government claims that the duties charged at its ports on goods going to Indian States are not transit duties. If this is correct, then the ports in Indian States, Mandvi, Okha, Bedi, etc., are entitled to claim that the duties collected on goods handled in their harbours should go to their respective States. Where the maritime States are concerned, however, the Government of India holds the view that the duties *are* transit duties and therefore that the British Indian exchequer should get a refund on the goods passing the frontier of the States. So far as internal States are concerned the Government takes its stand upon exactly the opposite principle and holds that the duties charged at their ports are not transit duties, and therefore the States are not entitled as of right to get their share of the revenue. Obviously both of these principles cannot be right at the same time. If the Government of India is justified in claiming from the maritime States a refund on goods imported through the State ports but consumed in

British territory, by the same token the internal States are entitled to claim a refund or an equitable share of the revenue raised by customs duties.

The gravity of the economic and financial injustice of this policy is manifest. The internal States are, as a result, deprived of a legitimate source of revenue and their subjects are taxed heavily for the benefit of British India. The maritime States are handicapped in the development of their ports and commerce as the Government forces them to refund the British Indian share of the customs raised in State ports, either by agreement as in the case of Baroda or by establishing a cordon and charging British Indian customs on goods that pass through it. The immorality of this policy of forcing large areas with natural facilities to remain undeveloped is obvious.

When the question of a change in Indian fiscal policy was being examined, the States woke up to the danger of their position, especially because that examination was undertaken in response to the desire of nationalist India for protective tariffs. Protective tariffs on imports would fall with double weight on the States, because their subjects would be indirectly taxed without deriving either the benefits of increased revenue or of protection. The States therefore presented a memorandum to the Fiscal Commission in which they claimed that, while they did not desire to stand in the way of the Government of India recasting their customs policy, they were entitled to a fair share of the revenue derived from increased duties. The Commission shelved the question, but the States pressed their claim, and a Committee was promised to examine the whole question, which in view of the federal proposals has now become unnecessary.

It will be clear from the above analysis that the consolidation of political power which followed the Mutiny and the programme of economic development pursued in British India materially affected the economic interests of the States. The States were forced to yield important

sources of revenue, and when they protested the political power of paramountcy was used to coerce them into obedience. It is no doubt true that by this process India became united into a single whole ; an entity instead of many different communities. Before the railway and commercial policy of the Government of India developed in this direction India was divided by a number of different internal customs barriers which made the development of the whole altogether impossible. The following description given by Bryce of the conditions in Central Germany before its unification would have been as appropriate for India before the centralisation of authority by the use of paramountcy as it was of Germany before Napoleon.

> The traveller by rail in Central Germany used, up till 1866, to be amused to find every hour or two, by change in the soldiers' uniforms and in the colour of the stripes in the railway fences, that he had passed out of one into another of its miniature kingdoms. Much more surprised and embarrassed would he have been a century earlier, when instead of the present thirty-two there were three hundred petty principalities between the Alps and the Baltic, each with its own laws, its own court (in which the ceremonious pomp of Versailles was faintly reproduced), its little army, its separate coinage, its tolls and custom houses, its crowd of meddlesome and pedantic officials presided over by a Prime Minister who was often the unworthy favourite of his prince and sometimes the pensioner of a foreign court.

If in India the evils of this system do not materially affect the development of the whole, that is the result of the arbitrary dominion exercised in the name of paramountcy by the British Government. That exercise of unwarranted authority by which the economic unity of India was achieved set at naught the treaties with Indian States, placed them economically in a disadvantageous position and relegated them as backward areas. More, it made the States economic appendages of British India, to be indirectly taxed and fleeced for the benefit of the British Indian exchequer. It may be that in the circum-

stances the procedure adopted was the only course open to the Government if the territory controlled by them was to be properly administered. But the argument of unavoidability, especially when it is used in explanation of arbitrary methods affecting the just rights of others, is at best only an *ex post facto* justification open to the reply that if the Paramount Power had desired other methods it could easily have discovered them in co-operation with the States. As it is, there can be no doubt that the policy of unification, however beneficial in its ultimate results, has adversely affected the rights and future of the States in a very marked degree.

X

THE RIGHTS OF SOVEREIGNTY

THE question as to whether Indian States are sovereign, and if so, to what extent and in what manner, is one that is of more than academic interest. Its discussion is necessitated primarily by the fact that the Austinian conception of sovereignty as indivisible and unitary has so far held the field in politics and denied from the constitutional and theoretical point of view the right of Indian States to be called sovereign. Accepting the Austinian definition, that the sovereign is the superior who enforces and receives obedience and who yields obedience to none, and ignoring some of the facts of political life, Anglo-Indian jurists have declared Indian States to be non-sovereign communities. If it be accepted as a principle that sovereignty is indivisible and that only the power that is legally omnicompetent can claim that authority, then the conclusion naturally follows that Indian States are no more sovereign than either trade unions or dissenting churches. To this constitutional theory official opinion has given some political support, as when Lord Curzon declared in the Bhawalpur speech that ' the sovereignty of the Crown is everywhere unchallenged. It has itself laid down the limitations of its own prerogative.' [1] Again, in circular No. 1700 E, of August 21, 1891, the Government of India officially declared that the paramount supremacy of Her Majesty presupposes and implies the subordination of Indian rulers. This comprehensive claim on behalf of the British Government and the implied denial of sovereign rights

[1] *Curzon in India*, p. 227.

to Indian rulers are clear proofs of the influence of the Austinian conception of sovereignty in Indian political thought. The actual fact of political experience in India that the people of Indian States accept as their sovereign only the rulers themselves is explained away by declaring that the Crown itself has laid down the limitations of its prerogatives. This explanation could be used, clearly, to justify any claim. The Chinese Republic, for example, might declare itself to be the unchallenged sovereign of Hong Kong, or Spain of Gibraltar, or England of Normandy, with the necessary addition that 'the Crown has merely laid down the limitations of its own prerogative.' It is clear that the Austinian idea of sovereignty would not fit in with the political facts of India. Those who, in the interests of a dogma, attempt to find ingenious explanations would be driven to the same methods as those by which Le Fur has attempted to preserve the form of the omnicompetent state even in the theory of Federalism.

The sovereign power of modern law is, in reality, a fictitious Leviathan, the curious outcome of a combination of royal power with Roman *imperium*, to which, as the medieval king was also a feudal lord, was added the conception of allegiance and ownership. Bodin, Hobbes, de Loholme and others, the alchemists who transmuted these conceptions into the modern conception of sovereignty, were interested in the deification of the state's power. But at no time and in no country did the theory approximate to political facts. The British Parliament, in the plenitude of its power, declared that no Catholic in Ireland was worth more than five pounds, but that does not seem to have either materially impoverished the Catholics there or made their property purchaseable for that sum. Bismarck declared that he would not go to Canossa, but the humiliation which awaited the Austinian experiment was greater than that which followed the physical submission of the Emperor. When Lloyd George invited de Valera to send his delegates, the Austinian sovereign had to be conveniently forgotten or

relegated to a place of honour only in academic discussions. The theory of undivided sovereignty, in fact, died an inglorious death more than six hundred years ago when Nogaret rode into Anagni and arrested him who had declared, not in conceit but with conviction, 'I am Caesar, I am Pope.' All the legalist attempts to resuscitate that theory can no more be successful than the attempt of all the king's horses and all the king's men to put Humpty Dumpty together again.

The modern attempt to bring this conception actually into the life of the States apart from the sterile field of scholastic discussion, dates from the French constitution of 1791, which declared that 'sovereignty is one, indivisible, inalienable and imprescriptible.' But with all the force of the great revolution and Napoleon behind her, France has not so far been able to carry this view into practice, and the claim of regionalism is probably greater to-day in France than at any time since the fall of the Girondins. But almost side by side with this assertion by revolutionary France of the conception of undivided sovereignty, there was growing up in America, from roots implanted from the Netherlands, that idea of the state as a complex of rights and authorities which is the essence of federalism. As M. Duguit points out, federalism is essentially constituted on the basis 'that there exists on the same territory only one nation but several states invested as such with sovereign power. Every federation is divided into a central and federal state which is the nation regarded as a state, and local groups themselves states constitute the federation.'[1]

The writers who are anxious to fit facts to theory rather than theory to facts have striven to deny sovereignty either to the central organisation or to the constituent states. Some, like Dicey, have denied sovereignty to the constituent bodies, while others, like Seydel, have gone to the extent of declaring that the central authority even in the German Empire is not

[1] Leon Duguit, *Law on the Modern State*, George Allen & Unwin, 1921.

sovereign. The easy solution that there can be non-sovereign states is obviously untenable, because in all modern states, including the Great Powers, there is a very strict limitation of authority by international agreement, and very definite rights of interference from outside bodies. So, between a state like China, bound hand and foot by international agreements, and a great power like England, the difference is one of degree rather than of principle.

The difficulty is mainly a result of attempting to maintain a theory that cannot explain the facts of politics. The undivided sovereign of the Austinian school is a meaningless metaphysical conception. Sovereignty is divisible, and in all modern states this principle is frankly admitted. Sovereignty is, after all, the complex of public powers, and its division is not only possible, but constantly undertaken in the relations between states. The real basis of the conception of sovereignty is that contained in Cardinal Newman's phrase, 'degrees of obedience'; and when co-ordinate obedience to different sources of public power in different matters is possible, it is clear that sovereignty is divided and shared between them.

In India the sovereignty of the larger States is unimpeachable. Their courts of law are supreme; legally the ultimate source of authority is vested in them. Many States have their own coinage. The persons of their rulers are inviolable and above law. They have, by law, absolute rights of life and property over their subjects. These are not rights derived from the British Government, though the British Government has guaranteed them in exchange for the surrender of certain other rights. True, they have no independent international status in the sense that they can neither accredit nor receive ministers. This limits their external independence, but cannot be said to affect their sovereignty in matters in which by treaty they still possess full and final authority. Till 1920 Afghanistan had not the right

of direct diplomatic relationship with other states, but the sovereignty of the Amir was a fact which even the strongest claimants of British imperialism could not have denied. It is only on the basis that there can be degrees of sovereignty and that sovereign authority is divisible that these facts can be explained or understood.

The Government itself has come officially to this point of view. The basis of discussion of the constitution of the Chamber of Princes was that the Chamber should be composed of 'Ruling Princes of India exercising full *sovereign powers*, *i.e.* unrestricted civil and criminal jurisdiction over their subjects and the power to make their own laws.' Thus, according to the Princes themselves, 'full sovereign powers meant the right to make their own laws and unrestrained civil and criminal jurisdiction.' It is also implied that there may be degrees of sovereignty and jurisdiction, and that there are among the Indian rulers varying degrees of sovereign authority.

It is quite true that for purposes of international law these States have ceased to be independent and sovereign. On that question there is not the least doubt. But so far as internal sovereignty is concerned, it is equally clear that their prerogatives and authority, and the loyalty which their subjects owe to them, admit of no dispute and are inherent in their own rights and not derivative from an outside source. The recognised outward symbols of sovereignty, such as the right to give titles, to have coins and stamps, to be inviolable and above law, to have the authority to promulgate legislation which commands unquestionable obedience, the major Indian States possess and are guaranteed in that possession by treaties. They give titles of honour and distinction to their own subjects. The Nizam gives the title of Maharajah, Rajah, Nawab, Dewan and all the rest of the recognised Indian titles of honour. His right to give titles to British subjects has been denied, but that in no way interferes

with his own right as the fountain of honour for his own subjects. The chief Maharajahs all over India enjoy this right, and everywhere this is considered an exclusive prerogative of sovereignty.

Full powers of civil and criminal justice are also enjoyed by the independent rulers. They have their own High Courts, from which there is no appeal either to the Privy Council or to the King. The right of appeal, if reserved at all, is reserved to the ruler himself, and in some States the Maharajah exercises this function through a Ministry of Appeal, as in the case of Gwalior. As the fountain of justice, the ' full-powered ' rulers of India are uncontrolled masters of life and property, and most of them could declare with greater truth than Richard II that law was in their breasts. They have the right of legislation, which they exercise either personally or, as in the case of Mysore, Cochin, or Travancore, through a legislative council empowered to originate, discuss and pass legislation with the consent of the ruler. The councils derive their authority entirely from the ruler, and are answerable to none but him. The laws thus made are enforced with all the authority of the sovereign, and all who owe allegiance to the ruler, and those whose nationality does not give them right of trial by their own countrymen, have to obey them like any other law. Disobedience is visited with penalties exactly in the same way as in other sovereign states.

The inviolability of the ruler's person, and the powerlessness of courts not only in his own State but even in British India and elsewhere to try him or punish him, are well-understood facts. In the case of Statham *v.* Statham it was laid down that the courts in England can have no jurisdiction over an Indian ruling Prince. Extraordinary commissions have on occasions tried Princes, as in the case of Malhar Rao Gaekwar, who was publicly tried before an extraordinary tribunal. In this matter there is no doubt that the Government exceeded its powers, for though there have been worse examples of

misrule and disloyalty since then, no single ruler has since been tried in public. The mere fact that an action exceeding recognised powers has been taken would not constitute a precedent. An English court tried and executed Mary Queen of Scots, who was an independent ruler, but that precedent does not create a right for the British Crown to try and execute the crowned sovereigns of foreign countries. Malhar Rao Gaekwar's trial was certainly illegal, and the weakness of the Indian rulers in demanding their just rights was the only reason why it took place. The case of the Jubraj of Manipur was different, as he was only the heir-apparent, and what was done in his case was done as an act of war, almost in the same way as the execution of Charles I by Parliament. These cases do not give the Paramount Power a right nor take away from the Princes the inviolability of their persons or their prerogative of being above the law of their own States, or above laws promulgated by the British Government for the observance of its subjects.

The right to have coins and stamps, which is another equally valued symbol of sovereignty, is enjoyed by the major Indian States. Hyderabad has a whole system of coinage, and other States also enjoy it in varying degrees. The States that have separate inland postage have their own stamps, as in the case of Cochin.

Military establishments varying from considerable forces of definite fighting value to a few men in uniform are the universal characteristic of Indian States. As we have seen in Hyderabad, Gwalior, Indore, Bikanir, Patiala and other States, the armies are effective units besides being the insignia of sovereignty. But everywhere the rulers look upon their military establishment as demonstrating their right to maintain an independent force, which is an important part of sovereignty. The limitation of armaments does not necessarily take away the sovereignty of a State, since by the treaty of Paris Russia was forced to limit her naval armaments in the

Black Sea, and by the Treaty of Versailles Germany and the enemy powers are under obligation to disarm.

The theoretical sovereignty, therefore, of Indian rulers who enjoy full powers within their States cannot be denied. It must also be pointed out, however, that the gradation of sovereignty in the case of the smaller princelings of Kathiawad and Bundelkund and the Simla States, who are mediatised chiefs rather than rulers, vanishes almost to the point of nothingness. Their position has little in common with that of the independent States, though they also enjoy rights and privileges such as belonged to the feudal lords of medieval Europe.

The rigid theory which turned the sovereign into a legal and metaphysical abstraction and invested him with powers over others which no human institution can possess, has gone the way of other abstractions that have forgotten the facts. The juristic theory of an absolute, final and undivided authority has had no historical experience to back it. The most obvious facts of national organisation, such as co-ordinate states in federalism, the international position of the Irish Free State and the Dominions in the British Empire, the peculiar position of Bavaria and Saxony in Germany, and that of the Indian States in relation to the Central Government, had to be ignored or distorted to suit a theory which had nothing in its favour but a logical symmetry. The only acceptable theory of sovereignty is that of a complex of public powers which can in its permutation and combination vary from a full-powered international state like England or Japan to one like Baroda or Mysore, where the ruler has internationally no independent status, but enjoys sovereign powers within his own territory. Unless we come back to the truth emphasised by Sir Henry Maine that sovereignty is essentially divisible, we are likely to be misled by the conflict of jurisdiction to the utterly untenable conclusion that the Indian States have no rights except those given by the will and pleasure of the British Government, that the rulers of Indian States are

rulers by the grace of the King-Emperor and not of their own right. That would be a position justified neither by history nor by the known facts of the case. There can be no doubt that, within the limits set by the agreements that define their relation with the British Government, Indian rulers are sovereigns by every criterion of political science.

XI

THE CONSTITUTIONAL POSITION

THE relation between the Government of India and the Princes, though mainly based on treaties, is governed by certain obvious political and legal considerations which may be called the conventions of our constitution. Without a proper understanding of these, the position of the States cannot be fully realised. During the course of the last century and a quarter, these relations have undergone such changes that a mere reading of the treaties would give an altogether false impression of the position. A collection of principles, threatening to become by precedent, interpretation and analogy a separate system of public law, has been developed; and the procedure of the Political Department is as complicated as it is varied. An analysis of the conventions and principles underlying the relations is necessary if we are to avoid the pitfall of taking too rigid and too legal an attitude on this question.

At the outset it should be remembered that the Government of India is not only the successor of the East India Company which made treaties on the basis of equality with Indian Princes, but also the trustee and representative of the wider interests of the country. The fact that it is the *British* Government should not obscure the other fact that it is the Government of India, while the States are only portions historically and politically marked off on the map. It is this fact, very clumsily and objectionably expressed, that led to the claim that the British Government not only represented the Company but was, so to say, the testamentary successor of the Moghul Empire. In whatever way it is expressed, there can be

no denying the fact that on the Government of India falls the duty of seeing that the rights of the Indian States are not used against, and in their effects do not become detrimental to, the general welfare of India. The broad interests of the whole of India cannot fail to be of equal interest to the States also ; and hence this limitation is, in the larger view, no encroachment on the rights of the States, but a safeguarding of their position. Thus there has arisen a vast body of agreements beyond the scope of the treaties which govern the relations of the States with the Government. Nevertheless, the most important basis of the complicated polity that has arisen is the treaty which binds each State to the Government. The word 'treaty,' in legal as well as in common language, is used only for the solemn agreements between independent nations. A treaty is presumed to be a voluntary act on both sides, and a breach of it can be punished only by the use of force and not by an appeal to a court of law. All treaties are above the jurisdiction of the ordinary law, and failure to observe a condition can be visited only by the penalties prescribed by the treaty itself. A repudiation of the treaty can only be met with the sanctions that uphold the agreement. Even in the case of the Sultan of Johore in Mighell *v.* the Sultan of Johore, a sovereign whose position is similar to that of the Indian Princes, it was held that the treaty which bound him not to enter into any engagement with any foreign state was 'not an abnegation of his right to enter into such treaties, but only a condition upon which the protection stipulated for is to be given. If the Sultan disregards it, the consequences may be the loss of that protection or possibly other difficulties with this country.'[1] It may be sufficient cause for hostile action on the side of the other contracting party which may lead to the annexation of the country and the deprivation of the ruler's right. But the essence of a treaty is that its breach cannot be punished by law, as its sanction does not rest on the municipal law

[1] J. B. Scott, *Cases of International Law*, p. 284.

of a country. Thus the failure to respect treaty obligations led to hostilities in the case of Coorg and to forcible intervention in the recent case of Nabha, where the Maharajah violated the condition of loyalty and in other ways ignored treaty obligations.

The relationship, however, as has been pointed out, is not entirely based on treaty. Considerations of all-Indian interest, Conventions regarding sovereign authority, agreements in connection with customs, etc., such as the inter-portal Convention with Travancore and Cochin, and other rights either surrendered by the Indian States or accepted tacitly by rulers, supplement the original restrictions contained in the treaty. There results from this an implied or clearly understood political bond. There is no right to secede, because the States are internal states and their right by treaty is clearly limited by the wider consideration of the interests of India. If they have no right of secession they can have no right to declare war, and obligations of this nature effectively restricting the operation of treaty rights constitute an important factor in the relations of Indian States.[1]

It must, however, be understood that these relations are altogether extra-constitutional, and the bond that unites is in no way the claim of the Paramount Power to a feudal sovereignty. The Indian rulers have consistently repudiated the feudal theory which it was sought to foist upon them. A large number of the states of Orissa, Central Provinces and the Simla hills are undoubtedly feudatory, for their relations with the sovereign from whom their allegiance was transferred were of that kind. Thus the chiefs of the Mahikanta Agency were petty tributaries of the Gaekwar, and some of the Mahratta *jagirdars* were no more than officials of the

[1] The position of Monaco is in some respects similar to that of some Indian States. By the treaty with France, dated July 17, 1918, France assured the defence of the independence and sovereignty, and guaranteed the integrity, of Monaco as if the territory formed part of France. The Prince of Monaco undertook to exercise his sovereignty in conformity with the political, military, naval and economic interests of France.

Peishwa. But the feudal tie is not binding on States possessing independent treaty rights, and the attempt of the Political Department from the time of Lord Canning to that of Lord Curzon to interpret the relationship in the terms of the feudal king and his lords cannot be justified either from history or from fact. The assumption of the imperial title, and the system of the Durbars which followed it, were in part the outcome and in part the cause of this feudal misconception, which the Princes have never accepted. They have attended Durbars under protest, and have always considered the compulsion to attend them as an unjust use of *force majeure*. The feudal tie is personal, while the rights of Indian Princes are in relation to the Government of England and their treaties with the Crown.

It has been customary to say that the Indian States are under the suzerainty of the Crown. This view has even found statutory expression. But, so far as the Indian States are concerned, the relationship between them and the Government of India cannot be described by this term. It is both inaccurate and misleading. 'States under suzerainty of others,' says Hall, 'are portions of the latter which during a process of gradual disruption or by the grace of the sovereign have acquired certain of the powers of an independent community.'[1] A state under the suzerainty of another is a part of that state and has only those rights which have been granted to it. It is clear that by no stretch of imagination could the position of the Paramount Power in India be considered that of suzerain. Only in the loose sense of paramountcy could suzerainty have a meaning in India.

The most obvious fact in the complex system of the relations between the Indian States and the Government is that they form one definite Indian polity—the Indian Empire. Internationally, British India together with the States form one unity. Even as regards the British Empire, India, both British and Indian, is a single entity.

[1] Hall, *International Law*, Oxford, 8th edition, p. 32.

The disabilities which Indian subjects suffer in the colonies extend to the subjects of the Princes. The rights which Indian subjects possess elsewhere are enjoyed by the subjects of the Princes. The States form a part of the political system. There are evident both in the system and in the relationship which is the basis of it, important elements of a federal tie. The whole theory of federalism is that while the constituents remain sovereign and independent, the claims of the Central Government are recognised in a definite surrender of certain important rights. That is the essence, beyond a doubt, of the Indian system, so far as it relates to the major States. The joint political entity of the States and British India is recognised, and the Government of India as the central government exercises certain rights which the States have surrendered. The tie is thus essentially federal and is based on a division of sovereignty. It is not a confederation, because the right to secede does not exist, and the central government has become the only authority responsible for defence and high policy. The federalism of the Indian polity is, of course, very much limited, inasmuch as the central government has practically no legislative or executive authority over the States. It is true that the jurisdiction of European and American residents is reserved for it, and that the central government through its own executive officers controls the telegraph and postal systems which operate even within the limits of the States. But that can be considered only as a part of the action taken for defence. The central government as vested in the Governor-General in Council has no powers of legislation which would, without the express enactment of the rulers, affect the subjects of the States. This and other restrictions only show that the federalism that has developed in the imperial polity of India is of a weak and to some extent inchoate character, but that fundamentally the system is a federalism no one who has examined the facts can deny. The federal system of Germany, though it

preserves the independence of the states and preserved the sovereignty of the rulers, gave to the Empire authority for legislation, fiscal policy, and judicial administration, besides full authority for the control of foreign policy, involving the right of declaring war and concluding peace. The federal tie was so strengthened that advocates of the unitary state, such as Treitschke, declared that the Empire, though federal in form, was unitary in fact. In India, while the federal principle has been recognised in the right of the Government to sole control in questions of defence, and the acceptance by the rulers of the right of the Government to build telegraph lines and maintain a postal system, under imperial officers, within the territories of the States, the independence of the Princes has remained unchallenged. Those rights which were clearly contrary to the fundamental conception of the federal principle, as the right to denounce the treaty and to secede, have vanished, while in their place the Princes have obtained the privilege of discussing in the Chamber of Princes affairs common to their territories and to British India. The federal idea, while it has necessarily restricted their independence in those matters, such as defence, that are vested in the central government, has given to those Princes who possess sovereign rights the duties of the constituent states of a federal body. It is only along this line that the polity of India can develop, for the future Indian Empire can only be a union of States. As His Highness the Maharajah of Alwar declared: 'My goal is the "United States of India," where every province, every state working out its own destiny, in accordance with its own environment, its tradition, history and religion, will combine together for higher and imperial purposes, each subscribing his little quota of knowledge and experience in a labour of love freely given for a noble and higher cause.'

XII

THE CHAMBER OF PRINCES

WITH the introduction of the Montagu-Chelmsford reforms and the institution of the Chamber of Princes, the position of the Indian States has undergone a subtle though important change. The establishment of the Chamber of Princes is in itself a departure. It meant the surrender of one of the most cherished principles of British policy in relation to the Indian States, viz. the refusal to permit joint action or interest in each other's affairs. A community of interest alone can be the basis of a political organisation, and the Government of India in convoking a permanent body constituted of the ruling Princes tacitly accepted the right of each one of them to be interested in the welfare of the whole and to work for the interests of the entire body.

The idea underlying this change was thus defined by the authors of the *Reforms Report* :

> We wish to call into existence a permanent consultative body. There are questions which affect the States generally or other questions which are of concern either to the Empire as a whole or to British India and the States in common upon which we conceive the opinion of such a body would be of the utmost value. . . . Any member of the council or the council as a whole might request the Viceroy to include in its agenda any subject on which discussion is desired. . . . The direct transaction of business between the Government and any State would of course not be affected by the institution of the council.

The King's proclamation of 1921 at the inauguration of the Chamber again defined its limits :

> My Viceroy will take its counsel freely in matters relating to the territories of Indian States generally and in matters that

affect these territories jointly with British India or with the rest of my Empire. It will have no concern with the internal affairs of individual States or their rulers or with the relations of individual States with my Government, while the existing rights of these States and their freedom of action will in no way be prejudiced or impaired.

The purpose of the Chamber of Princes and its limited scope are thus clearly defined. As a consultative body concerned with the affairs relating to Princes, it constitutes a great advance in the relations of the Princes with the central government. By belonging to it no State loses its independence or right of direct negotiation, and the internal affairs of no State can be discussed unless the ruler himself desires it. Further, the Princes of India as a body gain the right of discussing affairs which are of concern either to the Empire as a whole or to British India and the States in common. The value of the Chamber and its influence on the relations of the Government of India are to be seen in the modification of the arbitrary methods so far pursued by the Political Department in relation to the States.

The very first question that attracted the attention of the Princes was the codification of political practice. Speaking at the first session of the Chamber, Lord Chelmsford said :

The next recommendation is that with the consent of the rulers of the States their relations with the Government of India should be examined, not necessarily with a view to any change of policy but in order to simplify, standardise, and codify existing practice for the future. In his journal written more than a hundred years ago Lord Hastings referred to the formidable mischief which has arisen from our not having defined to ourselves or made clear to the Native Princes the quality of the relations which we have established with them. In the memorandum prepared in January last by a committee of Your Highnesses this sentence is quoted with approval. I realise that the memorandum must not be taken as conveying the considered opinion of those who did not share in its preparation, and I believe that with regard to this proposal also some concern has

been felt by some among your number lest standardisation should involve a diminution of treaty rights. . . .

On the other hand, although direct agreement naturally constitutes the most important source of obligations existing between the British Government and the States, yet it does not supply the full basis, and the study of long established custom and practice is essential to a proper comprehension of the true character of the bond. The Government of India are anxious that the matter should be most fully ventilated because the suggestion has been made that custom and practice have in the past tended to encroach in certain respects on treaty rights. . . . I shall welcome any general observations which any of Your Highnesses may desire to make during the conference either on the subject of infringement of treaty rights or in regard to the possibility of revising treaties or simplifying or standardising custom and practice. There is an obvious risk that any over rigid standardisation might fail to take due account of the peculiar circumstances of particular States and of the special obligations which we owe to them by treaty. But the advantages of a cautious codification are also clear and the tendency of all progress is towards greater definition. Of recent years we have endeavoured to review our practice under various heads. It is possible that many of Your Highnesses may consider that if the recommendations made in the remaining items of the agenda are eventually adopted, and especially the recommendation in regard to placing the important States in direct political relations with the Government of India, the desired unification of practice and development of constitutional doctrines will follow.[1]

In fact, on such questions as minority administration and the succession procedure, much has already been done in the nature of establishing well-defined practice. This has more than brought out and re-established the fact that the rights of Indian States are inherent and not dependent on the 'grace' of His Majesty, as Lord Curzon and others had tried to assert. The Chamber of Princes does not in any way interfere either with the internal independence of the State or with its right to maintain direct relations with the Government of India. What it does is, in fact, to maintain the claim that the rights, jurisdictions, and authorities of the sovereign

[1] *Lord Chelmsford's Speeches*, pp. 159 *et seq.*

Princes of India are based on treaties and political practice arising out of mutual agreement, to alter which the consent of both the parties is required.

The establishment of the Chamber of Princes has also helped to emphasise the difference which the Political Department had conveniently tried to forget, as the Montagu-Chelmsford Report itself admits, between the sovereign and the non-sovereign States in India. Sir John Malcolm, Sir Charles Metcalfe and all others who shaped Anglo-Indian policy in an earlier generation recognised this. Wellesley recognised it when he drew attention to the difficulties arising from relations with independent States in his Mysore despatch, and meant the treaty with Mysore to be a model for the new system of subsidiary alliances. Sir Charles Metcalfe in 1837 classified the Indian States into quasi-sovereign states and dependent principalities. The Marquis of Dalhousie's policy in relation to the important question of adoption was based on the differentiation between dependent vassal states and sovereign rulers. The Montagu-Chelmsford Report recognises this difference and admits that it has been lost sight of when it says ' that practice appropriate to the minor chiefs has been used even in the case of the major ones.'

This differentiation is all-important in the question of Indian States. To jumble together in the same category sovereign Princes enjoying rights of life and death, ruling over millions of people and maintaining military establishments and independent administrations, like Hyderabad, Gwalior, Baroda, Mysore and Travancore, with the petty princelings of a few villages, is indeed to hide facts under a false nomenclature. From the point of view of administrative independence the States should be classified under three heads : those that have complete legislative and executive independence within their borders, those that have it partially and under effective supervision, and those that do not have it. Only the first two classes have salutes, but even among them it is necessary that a

clear distinction should be made. The third class, which makes up by far the largest number, is now officially called 'estates and jagirs,' and this necessary differentiation does not of course affect the special honours and jurisdictions of their Rulers. The exclusion of such States from the Chamber of Princes has hastened the clear demarcation of this class. The rights of the first class are guaranteed to them by treaty, and the Government of India cannot but withdraw from the false position it has taken up in identifying them with the minor chiefs. Their position is clear, and can only be strengthened by the establishment of such an institution as the Chamber of Princes.

It is only with regard to the second class of Princes that serious difficulty arises. In their case generally there is expressly reserved a right of intervention in internal affairs, supervision of criminal jurisdiction, and in some cases limitation of judicial authority and restriction of the right of legislation; and further, as in the case of Simla Hills, the reservation of residuary rights for the British Government. These States are sovereign only in a more limited way than the others.

The Chamber of Princes has also helped the States to maintain the undoubted residuary rights they possess in matters not mentioned in their treaty. Thus, for example, the question of wireless and aerial transport, which formerly would have been considered to fall entirely within the sphere of the central government, has now been decided by discussion in the Chamber. Though in some cases the central government has reserved for itself such rights as are not mentioned in the agreement, it is clear enough that in most of the treaties with Indian States the rulers have surrendered only those rights which are specifically mentioned in the treaty itself. The benefit of any omissions must go to them, as they are presumed to have been in full sovereign authority at the time of the treaty. This does not, of course, affect the minor chiefs like those of Mahikanta or the chiefs

of Simla Hills, but it is an obvious fact with regard to sovereign States. Though the Government itself has never denied this fact or challenged the right of Princes to develop in new directions in internal affairs, yet on questions which it considered to affect imperial policy it claimed the benefit of a constructive interpretation and sometimes actually put forward claims in virtue of its sovereign position—an attempt, in fact, to claim residuary authority in certain matters. Thus, for example, the Government of India has tried to claim the sovereignty of the air, though on the basis of treaties with Indian States no such valid claim could be made. Such encroachments are now less easy to make, for the Chamber of Princes is fully alive to this question, and its standing committee, as in the case alluded to above, is now constitutionally entitled to bring up such questions for consideration and discussion.

The position of the States in the British Empire as a separate constituent of it has also been recognised. The King's proclamation stated that the Viceroy was to consult them in matters affecting their territories jointly with British India or *with the rest of the Empire*. Thus the Princes have gained a new status as autonomous sovereign states not of the Indian Empire only but of the *British* Empire. The Indian delegation to the Imperial Conference always included a ruling Prince as representative of the independent States of India. The admission of Princes to the League of Nations has not been on the basis of their being rulers of Indian States, about whom international law knows nothing, but of their being members of the Indian delegation.

Indian Princes, moreover, have gained the right of discussing major problems of policy in British India, such as defence, legislation that may affect them, *e.g.* in tariff matters, without the Indian legislature obtaining any corresponding rights in their affairs. Their collective opinion with regard to political reforms in India is known to carry great weight with the authorities. Thus,

while preserving their absolute internal independence and, indeed, strengthening it by a revision of treaties and agreements and the codification of political practice, the Princes have gained a new position as Indian and imperial personalities who have collectively a right to be consulted on matters affecting policy and whose voice naturally carries great weight. They have been, in fact, collectively recognised as an independent constituent of the Empire

XIII

THE FUTURE

WHEN at the opening session of the Indian Round Table Conference the representatives of the States expressed clearly and definitely their willingness to enter an all-India federation, there was considerable surprise felt even in well-informed quarters. The Prime Minister voiced the view of the British Government that the declaration of the Princes fundamentally altered the character of the Indian problem. While it was generally recognised that the Princes had taken a wise and statesmanlike step in thus welcoming the creation of an all-India federation, the open repudiation of the principle of isolation to which they had so far adhered was considered as inexplicable as it was surprising.

The legal theory of Indian Government during the last one hundred years has been that the States are foreign territories governed by their own independent rulers, having no political connection either with each other or with British India, except through the paramountcy of the Crown. The historical and political reasons for thus isolating the States have been discussed at some length in the earlier chapters. Their isolation from British India was due in part to the jealousy with which the rulers guarded their sovereignty, and in part to the declared policy of the Paramount Power to treat the States as foreign territory.

But though in legal theory the States were independent and isolated units, in actual fact they had ceased to be so long ago. As has been pointed out in earlier chapters, the whole of India—States and British—gradually became

one single political entity, in part under the sovereignty, and in part under the 'suzerainty' of the Crown. In fact, the inexorable logic of political growth had outrun the development of legal theory. The process by which this important though unseen change was brought out has been traced in some detail before. The actual result of this change was that there was a clear and well-marked division of sovereignty between the States and the Government of India. The sovereignty of the States was in practice confined to matters affecting their internal administration, while the Government of India assumed, under the cover of the theory of paramountcy, practically complete authority in all matters of an all-India character. The central government has exclusive authority by treaty in all matters of defence and international relations, and by practice it exercises jurisdiction in matters affecting all-India currency, posts, telegraphs, trunk telephones, excise, maritime customs, etc. Thus the central authority in India had gradually become an all-India authority in many matters, and the legal isolation of the States remained purely theoretical.

The essentially federal character of the Government of India, though such federalism was purely embryonic and found no expression in appropriate institutions, has long been evident to the students of constitutional theory. In a recent book, written before and published on the eve of the Round Table Conference, the position was analysed in the following words :

> So far as India is concerned it is clear that certain of the most important elements of federalism already exist, though in an inchoate form. There is a central government which exercises the powers necessary for defence, foreign policy and the coercion of recalcitrant States, and it exercises these powers by virtue of their surrender by the Indian States. Thus the activities of the central government in regard to these matters partake of the nature of federal authority, and except in these matters the sovereign authority of the States remains. They enact their own laws and exercise all other powers incidental to their internal sovereignty.

But of course this is federalism only in the embryonic stage, nor does it find expression in any appropriate institutions. The constituent States are not represented in any central body, like the Senate or the Bundesrat, designed to give them as governments the right to share in the determination of common policy. Nor is there any judicial machinery to interpret either the rights of the central government or those of the States. That function is exercised by the Government of India acting as the Paramount Power which professes as a solemn duty the maintenance of the rights of the States. We shall examine later the essential incongruity of such a Paramount Power umpiring between itself and the sovereign States with which it is bound by treaties. A further characteristic of the existing position is that although the people of the States are directly affected by the measures of the central authority they have no voice in their determination, and the States themselves deny that the Government of India has any right to associate their peoples with the people of British India.

The apparent exclusion of the States from the central authority imparts to the constitution of the Indian Empire the semblance of a unitary government. The central government, which is also the Government of British India, decides all matters of common concern. The casual observer is thus led to think that British India by its larger size, and therefore as the predominant partner, has the right to decide matters in which the States surrendered their sovereign rights to the Crown. If this view were correct, it would mean a denunciation of the true relationship of the Crown and the States and imply that the present constitution of the Government of India was different from what it is; but this view is quite superficial, based as it is upon mere appearances. The Government of India, so far as it represents the Crown, has never in principle denied the right of the States to express themselves upon questions which concern or affect them. In fact, this right has always been admitted. Indeed, it was to give effect to this admission that the Maharajah of Patiala was nominated a member of the first Legislative Council in 1861, and to the same end of eliciting the point of view of the States there were also nominated from time to time one heir-apparent of a ruler and two Ministers of States who are also State subjects. This direct association with the affairs of British India was not approved of by the Princes themselves, and the Government of India had to revert to the practice of individual negotiation on common questions. Lord Lytton suggested a Privy Council to afford Princes the opportunity of taking a share in shaping the policy of their

country. All these attempts were, however, tentative; the constitutional need for developing institutions for the discussion of matters of common concern continued to be increasingly realised, and the idea of meeting it was taken up seriously during the Great War. The 'Chiefs' Conference,' which later on became the Chamber of Princes, and the Standing Committee of the Chamber represent the first cautious steps towards the development of institutions by which the Princes could express their views to the Viceroy on matters which affect them jointly with British India. The success or failure of these institutions is not the point here. What we desire to demonstrate is the fact that the Government of the Crown in India, though unitary in form, is essentially federal in principle.[1]

It has also long been recognised by competent observers that the true line of constitutional progress lay in the transformation of the Government of India from its unitary form to a federation. The Montagu-Chelmsford Report (1917) stated the problem thus:

Our conception of the eventual future of India is a sisterhood of States, self-governing in all matters of purely local or provincial interests, in some cases corresponding to existing provinces, in others perhaps modified in area according to the character and economic interests of their people. Over this congeries of States would preside a central government, increasingly representative of and responsible to the people of all of them, dealing with matters, both internal and external, of common interest to the whole of India; acting as arbiter in inter-State relations, and representing the interests of All-India on equal terms with the self-governing units of the British Empire. In this picture there is a place also for the Native States. It is possible that they too will wish to be associated for certain purposes with the organisation of British India in such a way as to dedicate their peculiar qualities to the common service without loss of individuality.[2]

The Simon Commission went much further. It definitely visualised the future Government of India as federal:

In order to estimate whether anything can now be done as a step in the direction of Indian Federation, however distant that

[1] *Federal India*, Martin Hopkinson, 1930, pp. 32-36.

[2] *Montagu-Chelmsford Report*, Paragraph 49.

goal may be, and in order to avoid false steps which could only lead us further away from it, let us visualise what the ultimate situation would be in a federated India. In its complete form, a Federal Legislature, a Federal Executive, and Federal Finance are all involved. The Federal Legislature would have to contain representatives both of the States and of the Provinces, and would exercise legislative powers over matters of common concern, together with powers of imposing and spending (or at any rate of distributing) federal taxes. The Federal Executive would be charged with the duty of administering federal subjects and, since it is useless to undertake a duty without means being available for carrying it out, would have to be able to secure the effectiveness of federal administration. The units of federation would be (1) a series of Provinces, each with its legislature, with a Governor at the head of the Province ; the internal government of the Province would be in the hands of provincial ministry, and each Province would have its own provincial revenues and expenditure ; and (2) a series of Indian States autonomously governed so far as their internal affairs are concerned, each with its ruling Prince in relations with the British Crown, and each with its own internal constitutional arrangements and its own system of internal finance, but with no powers to impose customs duties at its boundaries. And over the whole would be the representative of the British Crown, as Viceroy in relation to the Indian States, and Governor-General in relation to British India. The setting out of these elements in an ultimate Indian Federation helps to bring out some of the difficulties which have to be surmounted, and to show the need for caution and deliberation at every step. As regards legislative powers, since each State must remain free to make its own State laws, and each Province must also have its own legislative field, must not the Federal Legislature be limited to the making of laws on specific subjects which would be excluded from the ambit of both State and provincial legislatures ? Thus the residue of legislative power, outside the specific federal list, would lie with the States and the Provinces, and this would involve a strict distribution of legislative power such as does not exist in British India to-day. And does this in its turn not lead to the necessity of a Federal Court charged with the duty of seeing that the Federal Legislature does not overstep its powers, and of securing that the units of federation do not seek to exercise legislative powers which they have surrendered ? The answers to questions such as these can only be reached when the impulse towards federation has gathered so much strength that the units concerned come together to confer on the subject.

The proposals adumbrated by the Simon Commission were thus based on the assumptions (1) that the ultimate constitution of India can only be federal, and (2) that as the States are unlikely to accept this ideal for a long time, all that can be proposed immediately is a tentative beginning which could in course of time develop into a full federation.

The acceptance of federation as an *immediate* possibility was the real contribution of the Princes at the Conference. This decisive step, though it appeared to the general public as a sudden decision, which even the Government of India, much less the Indian public, had not foreseen, was the result of a carefully considered course of policy. For over six years the Chamber of Princes had consistently demanded :

(1) that the Princes should share effectively in the determination of policy in regard to questions affecting them jointly with British India,

(2) that a tribunal should be established for the decision of justiciable issues between the Government of India and the States or between States *inter se*,

and (3) that the powers claimed under paramountcy should be rigidly defined.

These claims, which were affirmed year after year in the Chamber, amount to a definition of federation. What the Princes were demanding was to create the appropriate institutions to express the federal character of the central government of India. Their demands were based on the assumption, accepted by the Simon Commission, that many of the subjects over which the government of British India exercised exclusive authority were of common concern to the States and British India, and that therefore the States should be associated in the formation and execution of policy relating to such subjects.

It will be seen that ever since the effect of the Montagu-Chelmsford Reforms came to be realised, the Chamber

of Princes has consistently asked for the creation of a joint legislature, a joint executive and a common Court —in effect for the creation of a federal government—to deal with matters of common concern to the whole of India. The declaration of the Princes at the Conference was therefore merely a specific reiteration of their claim, though the unique character of the occasion gave to it an importance and significance which the previous declarations did not possess.

The acceptance of the principle of federation by the Princes was subject to the following conditions :

(1) That the federal government to be established should have only such powers as are expressly assigned to it by the constituent units.

(2) That all other power must so far as the States are concerned remain with the States.

(3) That only such powers should be assigned to the federal government as are of common interest to the whole of India, or are required in the vital interests of the federation.

(4) That all questions affecting the dynasties and persons of rulers should remain the exclusive prerogative of the Crown.

(5) That an independent Federal Court should be established as a joint organ of the Crown and the States to maintain and safeguard the respective rights of the Central and State Governments.

(6) That the States enter the federation individually by agreement with the Crown.

And above all, (7) that the treaties, engagements and *sanads*, except so far as they are modified by the agreements establishing the federation, shall continue to be inviolate and inviolable.

The Sankey Scheme of federation, which is the outcome of the deliberations of the last two sessions of the Conference, is based on these conditions which the Princes laid down as fundamental. That scheme proceeds on a division of the subjects now within the juris-

diction of the Governor-General in Council under three heads :

(1) Crown subjects.
(2) Federal subjects.
(3) Central subjects.

The Crown subjects are those such as defence, foreign affairs, and the dynastic and personal matters affecting Indian rulers. The list of Federal subjects is a long one and requires careful study. There are altogether thirty-two subjects either wholly or partially federalised, and they are the following :

1. Communications to the extent described under the following heads, namely :	
(*a*) Railways (including railways to be constructed or acquired in future).	Policy and legislation to be Federal. Administration to be Federal to the extent of powers now exercised by the Railway Board.
(*b*) Aircraft and all matters connected therewith.	
(*c*) Inland waterways.	Policy and legislation to be Federal in respect of inland waterways affecting more than one unit.
2. Shipping and navigation, including shipping and navigation on inland waterways in so far as declared to be a Federal subject in accordance with entry 1 (*c*).	Federal for legislation and policy.
3. Lighthouses (including their approaches), beacons, lightships and buoys.	
4. Port quarantine.	Federal so far as international requirements are concerned.
5. Ports.	Such ports to be Federal as are declared to be major ports by rule made by Federal Government or by or under legis-

	lation by the Federal Legislature, subject in case of Indian States to such extent as authority may be delegated by the States under a convention.
6. Posts, telegraphs, trunk telephones and wireless installations.	Federal, but with such qualifications as may be necessary for the purposes of adjustment with the States in matters of detail.
7. Customs and salt.	Salt: Federal. Maritime Customs: Federal, subject to special adjustments with Maritime States having regard to their treaties, agreements and engagements. Customs on external frontiers of Federal India to be Federal on the lines of maritime customs subject to the special case of Kashmir.
8. Currency and coinage.	Federal, subject to adjustment with the States concerned of such rights as are not already conceded by them.
9. Public Debt of Federal India. (Powers to raise Federal loans.)	
10. Savings Bank.	Federal for policy and legislation regarding Post Office Savings Banks.
11. Federal Audit.	
12. Commerce, including banking and insurance.	Federal for policy and legislation.
13. Trading companies and other associations.	Federal for policy and legislation.
14. Development of industries.	Development of industries to be a Federal subject in cases where such development by Federal authority is declared by order of Federal Government, made after negotiation with and consent of the federating units.

15. Control of cultivation and manufacture of opium, and sale of opium for export.	Federal for policy and legislation.
16. Stores and stationery, both imported and indigenous, required for Federal departments.	
17. Control of petroleum and explosives.	Federal for policy and legislation.
18. Geological survey of India.	
19. Botanical survey of India.	
20. Inventions and designs.	Federal for policy and legislation.
21. Copyright.	Federal for policy and legislation.
22. Emigration from, and immigration into, India.	
23. Federal Police Organisation.	
24. Traffic in arms and ammunition.	Federal for policy and legislation.
25. Central agencies and institutions for research (including observatories) for professional and technical training or promotion of special studies.	Federal as regards future agencies and institutions.
26. Survey of India.	
27. Meteorology.	
28. Census.	Federal for policy and legislation, the States reserving administration.
29. All-India statistics.	
30. Federal services.	
31. Immovable property acquired and maintained at the cost of the Federal Government.	
32. Public Service Commission.	Federal for the purpose of federal services.

A close examination of the above would show that except for two or three minor subjects of practically no importance, the rest are all questions which are now under the exclusive authority of the Government of India. Thus maritime customs, posts, telegraphs, currency and exchange, etc., are subjects in which the States have at present no voice. In regard to railways and ports, also, the present position is maintained; that is, even where there are railways or ports within the State territories owned and managed by the States, policy and legislation remain with the federal government. In fact, therefore, the federalisation of these subjects has the effect only of legally ratifying the existing political position. The central subjects are matters which are of interest to British India only, and are practically limited to legislation on some important questions like criminal law, in which uniformity all over British India has been achieved as a result of the unitary government established by the Regulating Act.

The federal government is to consist of a Governor-General and a ministry responsible to a legislature consisting of two houses. The States claimed that by virtue of their political importance they should be given weightage in the Upper House, and the Sankey Report provides for a Senate of 200 members, of which 80 (or 40 per cent.) are allotted to the States. The strength in the Lower House is to be 350 members, and the States are given one-third. As both Houses are to be co-ordinate in authority, the representation proposed gives the Princes an effective voice in the federal government, especially as it is accepted that the federal executive should by Convention contain one or more representatives from the States.

It was accepted from the very beginning that so far at least as the Upper House is concerned the selection of representatives on behalf of the States should be left to the Governments of the States, provided that there was a uniformity of qualification for membership of the Houses.

So far as the Lower House is concerned, it was generally thought that the association of the subjects of the States in the selection was desirable from every point of view. It has, of course, to be recognised that the States are at the present time in different stages of political evolution, and that the methods of direct election which may be welcomed by States like Mysore, Travancore or Cochin, may not be possible or even desirable in the Simla Hill States. The association of the people of the States, where the machinery of popular government or of local self-government exists, is undoubtedly desirable, and both the Maharajah of Bikanir and the Nawab Sahib of Bhopal have publicly expressed their willingness to consider the idea.

From the point of view of the interests of the States themselves and the stability of their governments, the direct association of the people of the States in the choice of members of the Lower House seems to be necessary, as otherwise the matter might become a source of perpetual agitation. Besides, in the interests of federation also, the direct association of the people of the States in some form in the Lower House would be desirable. A federal parliament of which one House was in part elected on a democratic basis and in part nominated by rulers who are absolute in their own States, would not command the same authority as a body representing the entire population of India. From every point of view, therefore, the composition of the Lower House would have, even in the case of the States, to be based at least on close association with the peoples of the States.

It need hardly be said that those subjects which are not federalised remain within the exclusive authority of the States. The Prime Minister, in stating the considered views of His Majesty's Government on the proposals of the first Round Table Conference, accepted this point of view, which has thus become one of the fundamental conditions of the constitution. He stated :

The range of subjects to be committed to it will also require further discussion, because the Federal Government will have authority only in such matters concerning the States as will be ceded by their rulers in agreements made by them on entering into Federation. The connection of the States with the Federation will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations will be with the Crown acting through the agency of the Viceroy.

It is this clear and rigid determination of the spheres of federal and State authority that necessitates the establishment of a Federal Court. The federal court proposed by the Sankey Scheme is an institution created by the joint authority of the Crown and the States invested with full and plenary authority to decide all issues arising out of the constitution. The primary function of the court therefore would be to maintain the line of demarcation between the federal government and the States, and rigidly to confine federal and State authority within their respective spheres. The federal court therefore is the keystone of the arch of the federal union of India. The Sankey Scheme provides that the court shall have exclusive jurisdiction in the determination of constitutional issues, in the disputes of a justiciable character between a State and the federal government and between States *inter se*. From the point of view of the Princes, this proposal is a clear and important gain, as they have consistently demanded the establishment of suitable judicial machinery for the settlement of disputes between them and the Government of India.

So far we have dealt with only the constitutional aspects of the Indian federation. The success or failure of a federal constitution will depend not only on the delicate equipoise of the institutions created by it, but also on the financial arrangements providing for the revenue and expenditure of the union. Here also the fundamental principle of federation is that the central government can have only such sources of revenue as are assigned to it by the constituent units. All sources

of revenue of whatever character are presumed to belong to the units, and except where such sources have been surrendered to the federal government, are at the disposal of the States. The danger to the federal constitution lies on the one hand in the possibility that the sources assigned to the central government may prove inadequate, making the federation weak, powerless and incapable of undertaking works of national advancement or of meeting a national emergency, and on the other, of crippling the resources of the constituent States in such a manner as to render progress and administration impossible. Any scheme of federal finance, if it is to work satisfactorily, must therefore be designed in such a manner as to make ample provision for the expanding need of the federal government while preserving to the States their legitimate and natural source of revenue.

From the very beginning the States laid down three basic principles for a financial settlement: First, that no scheme would be acceptable to them which provided for the direct taxation of their subjects by the federal government; secondly, that cash contributions or territorial cessions in lieu thereof by the States should be taken into full consideration in any arrangement proposed; and, thirdly, that there should be no discrimination against the States in the matter of taxation. The Peel Committee which enquired into the financial aspects of the federal problems accepted in the main these principles. So long as these conditions are satisfied the States would have no reason to complain of any scheme of federal finance which would meet the requirements of the new constitution, because:

(*a*) Even now the sources of indirect taxation affecting all-India are enjoyed by the Government of India, *e.g.* maritime customs, currency profits, salt and other monopolies.

(*b*) The States will not have to give up any source of revenue which they now possess.

And (*c*) it will be constitutionally impossible to make any discrimination against the States in matters of taxation.

Of course the question of national finance in cases of grave emergency, such as war, stands on a different footing, and need not be discussed in relation to federal proposals.

As proposed, the federal sources of revenue will be :

(1) Maritime customs.
(2) Currency profits.
(3) Salt and opium monopoly.
(4) Profits of commercially-run federal departments.
(5) Income tax from the British Indian provinces and cash and other contributions from the States (provided that these are treated as vanishing items).
(6) Excise duties on goods enjoying protective tariff.
(7) All-India monopolies on selected goods.

The interests of the States do not in any way suffer under these proposals, and it is clear that while the federal government will be amply dowered, the financial resources of the constituent States would not be crippled.

It is now possible to consider and in some degree forecast the position of the States under the federal constitution adumbrated by the Round Table Conference. The internal autonomy of the States to the extent to which they enjoy it at the present time will continue undiminished, as the federal government will exercise authority only over those subjects which are already within the *de facto* jurisdiction of the Government of India. Even in regard to these subjects, the States will share in the formulation and control of all policy, and to that extent they will have recovered the ground lost during a century of imperial penetration. The delegation of authority in matters of common concern will not be to British India but to a Government constituted of British

India and the States, and therefore it is a question of mutual surrender and not surrender by one party to another. A more important consideration from the point of view of the States is that the continuous encroachments on the sovereignty of Indian States in the economic, political and financial interests of British India, against which the States have been legitimately complaining in the past, will no longer be possible, as the federal government will represent not merely British India but also the States.

The federal constitution now proposed also limits the operation of the claims of paramountcy. The Government of India's claims in this connection can be broadly divided under three heads : (1) rights which the States have agreed to vest in the Crown, like decisions on personal and dynastic matters ; (2) claims arising out of the obligation to protect the States from external invasion and internal commotions, such as rights of intervention in case of gross misgovernment ; and (3) claims said to be based on obligations to India as a whole. The first of these will continue to remain with the Crown. So far as the rights arising from the obligation to defend the States are concerned, these will naturally disappear when the States in participation with British India take over the control of defence. The third aspect of paramountcy automatically disappears with federation. When the States and British India together share the responsibility for the whole of India the claim of the present Government, based on an assumed right to safeguard the interests of India, ceases. Of all the aspects of paramountcy it was this claim of the Government to subordinate the interests of the States to what the Government of the day considered to be the interests of India as a whole, which caused the greatest dissatisfaction in the minds of the rulers. Its limitation to personal and dynastic matters and to intervention in cases of gross misrule is one of the main benefits accruing to the States from a federal form of Government.

The future of the States under a federal government is therefore one which need not cause alarm to the most ardent advocate of State rights. It cannot, however, be pretended that federation involves no risks for the States. There is the vague but important problem of the rights of the subjects of the States under a federal government: there is the problem of the interaction of a democratic British India on the methods of personal rule: there is, further, the inevitable development of economic and social factors in a federal India which have to be frankly faced. A mere constitutional interpretation of the problem of the relationship between the States and the central government or between the States and the federation will no longer suffice. The future of States and peoples and political communities generally can never be wholly governed by legal theories or constitutional documents.

Nor could a defensive maintenance of the *status quo* in perpetuity be a safe or statesmanlike policy for the Princes. They have to look forward and visualise the future not in terms of a barren dynasticism but in terms of Indian citizenship. Their interests have to be safeguarded; their rights have to be preserved. But neither their interests nor their rights could be maintained for any length of time unless they were interpreted in terms of progressive nationalism.

This does not mean that the States have to be melted down in a single mould. The States can maintain their rights, prerogatives and jurisdictions provided that, in safeguarding them, no attempt is made to erect them into barriers against national interests. The Princes have to remember that at the present time no juristic separation, however strong, could withstand the decisive influence of the economic factors which have already united India into one. With a common system of railways, posts, telegraphs, banks, salt monopoly, the States are bound and manacled to the chariot wheel of British India. The economic identity is complete.

Neither can the Princes afford to ignore the currents flowing beneath the surface of politics. The gulf that has been made by the national movement in the relations between the rulers and their people is a thing that cannot be overlooked. Nor can it be forgotten that the leadership of the liberal movements in the States is in British India. Wherever the States have succeeded in establishing a progressive administration actuated by liberal ideas it has been as a result of garnering the political experience of the liberal movement in British India. It is by this process that the Maharajah Gaekwar converted Baroda into a progressive State. A long line of British Indian administrators inspired by the liberalism of the Indian educated classes transformed Travancore, Mysore and Cochin into modern States. The same process is now going on all over India. The rulers may refuse to accept the ideas of the Indian educated classes, but it is mainly on the latter that they depend for importing efficiency and modernism into their administration.

In fact, even a casual examination would show that the middle classes of British India have become indispensable to the States for the efficient running of their administration in its technical branches, for the development of the economic resources of the States and, what is more, for the maintenance of their political rights. Without the legal, financial and political experience of the British Indian middle classes the States' administrations would collapse and revert to medieval conditions. Their political advisers have to come from British India ; the capitalists who develop the economic resources of the States are from British India ; the officers who carry out the daily administration in its technical branches are overwhelmingly British Indian. Therefore, the development of the States can only be in co-operation with British India.

The problem of the States can no longer be envisaged as constituted only of two factors, the paramountcy of

the British Crown and the sovereignty of the States. There are two other factors, the people of British India and the people of the Indian States. A wider interpretation of the two former should also include the two latter factors. To interpret paramountcy in terms of an obsolete feudalism or an absolute Caesarism is to forget the inherent rights of the States—as also the claims of the Indian people. Equally it is true that to interpret the rights of the States in terms of a blighting and barren dynasticism is to forget the people of the States as also the supreme claim of Indian nationality. The Government of India, whether Indian or Anglo-Indian, has to remember that the age of Lawrence, Dufferin and Curzon disappeared with the rise of an integral nationalism in India. Nor are the Princes entitled to forget that the political evolution of a hundred years lies between them and their ancestors who fought with the British Government and negotiated treaties. The age of Madhoji Scindia vanished at Assaye and Laswari, and it is a forlorn hope to think of re-establishing on the basis of a surrender by the British Government the India of many States.

An integral re-interpretation of the problem of India and the States is therefore the first necessity. That interpretation should take into consideration the claims of the central government, the special rights of the States, the demands of Indian nationality and the desire of the people of the States for association with the rest of India. The last two problems may be shelved for the time, but only at the grave risk of the entire solution of the problem going overboard when the irresistible pressure of the National Movement forces the issue later. It is in recognition of these factors that the States expressed their willingness to consider a federal union with British India as an immediate step in the political evolution of India.

There can be no doubt that this is the line of true development for the States. The only future that can be

visualised for India is as a federation of autonomous States united together under a strong central government which would look after their common interests. For such a consummation the present line of development, in which the Indian Princes, while strengthened in their independence, take their place also as sons of India, and their States as autonomous units of an Indian federation, provides the most hopeful beginning.

APPENDIX I

THE MINOR KATHIAWAD STATES

THE smaller chiefs of Kathiawad, who stand midway between independent rulers and ordinary landowners, require to be studied separately. The body of public and private laws which is there current is entirely different from that of British India and that of the regular Indian States. Relations with the British Government also stand on a different footing.

The whole area of the Kathiawad States, 20,882 square miles, comprises no less than 143 states. Of these, seven states (Junagadh, Nawanagar, Bhavnagar, Porbandar, Dharangdhara, Morvi and Gondal) are classed as first-class states and enjoy absolute authority. Seven others, including Limbi and Rajkote, have more limited powers, but enjoy jurisdiction over their own subjects. The rest are divided into many classes ranging from fairly large areas to quite small holdings, but large or small they do not form part of British India.

This complicated system arose from the accidents of historical growth. Both the Peishwa and the Gaekwar claimed sovereign rights over the Kathiawad area. The amounts due to them from the local chieftains were collected by the Mulkgiri system, under which an annual military expedition was sent to get the recognised payments. By the Treaty of 1805 with the Gaekwar, the British Government guaranteed that potentate's rights over Kathiawad, but soon discovered that in undertaking to maintain the Gaekwar's supremacy it was lending its authority to perpetuate a system of devastating military expeditions, which was neither fruitful in political results nor in conformity with recognised principles of orderly government. The Gaekwar was then advised to make agreements with these princes and to take from them fixed money payments, while leaving the chiefs full autonomy. Accordingly a settlement was made with 153 states by Instruments known as *Fael Zamin*, by which the chief undertook to remain peaceful and pay the contributions which were therein fixed. This document also laid the responsibility for maintaining public peace on the chiefs. Colonel Walker's settlement in 1807 was merely with a view to fixing the amount of tribute and its regular payment. As a result of the conflicting jurisdictions and

long-established family and clan feuds, Kathiawad had been a prey to the most terrible confusion, in which public order depended on the will, caprice or strength of arm of the 153 chiefs among whom the area was partitioned. By the *Fael Zamin* each chief undertook not to molest merchants and travellers, not to attack or quarrel with his neighbours, and provided another chief as guarantee for his fulfilment of the conditions. The rights of the Mahratta powers were continued, but in 1817 the Peishwa ceded what belonged to him to the British Government. The Gaekwar's right of intervention was denied in a letter of the Chief Secretary to the Resident at Baroda (February 10, 1816). 'Neither His Highness the Gaekwar nor the British Government has any right of interference in the internal affairs of Nawanagar or any other Kathiawad principality.' The Gaekwar's right to send troops and collect revenues direct was also given up in 1820, when the British Government undertook to collect and pay the Gaekwar the tributes owing to his government. Since then the British Government has been in the position of the sole suzerain, and it was authoritatively laid down by the Court of Directors in 1830 that the British rights in Kathiawad were limited solely to the exaction of tribute, and that Kathiawad chiefs are entitled to the uncontrolled exercise of the power of government within their own territories.[1] This is the charter of the Kathiawad States.

A political settlement determining administrative and judicial problems was effected in 1866. As the powers, privileges and authorities of the chiefs led naturally to chaos, the Government had to intervene in order to determine the exact nature of the relationships in which these states stood to one another and to the British Government. The position was greatly complicated by the existence of a class of nobles known as the *girassias*. In 1860 the Bombay Government asked the Government of India for an expression of opinion about its (the Government of Bombay's) right of interference between *girassias* and their rulers. Lord Cranborne in 1867 (despatch dated January 31) decided in Palitana *v.* Grassia Dajibhai of Sejalia that the British Government had the right to intervene between the rulers and the *girassias* because :

(1) They, the *girassias*, have been prevented by the strong arm of the British Government from going into Bushirwattia and there taking the remedy in case of aggression into their own hands.

[1] Despatch No. 7, July 20, 1830.

(2) They are entitled to look to the British Government for the enforcement of the obligations under the *Fael Zamin*.

On this the Bombay Government decided to establish a court, though the more important princes immediately protested against it. But a court was established notwithstanding the protest and continued to function till 1899. Notification No. 21 of 1899 of the Kathiawad Political Agent stated : ' The Political Agent will take no notice of any complaints of the kind until the *girassias* have exhausted the remedies open to them in the state.'

The main difficulty of the political system of Kathiawad was the right of partition belonging to certain minor states and ruling families. The subdivision of possessions has gone to such an extent that in some cases chieftainships extend to no more than one or two villages. Hence Kathiawad has become a veritable museum of petty sovereignties.

Whether or not the minor Kathiawad States enjoy any inherent right to be considered sovereign communities is a controversial question. It is certain that neither the Peishwa nor the Gaekwar considered some of the smaller states as having any sovereign rights, and that they reserved for themselves the authority to intervene and to act as they chose. But the British Government, in standing forth as the sole suzerain, disclaimed all such pretensions. As Sir Henry Maine, in his famous memorandum on this subject, has pointed out,[1] the rights inherited from the Peishwa and the Gaekwar have never been actively asserted, the Court of Directors having, in fact, declared in 1830 that they had no idea of enforcing those claims. It is clear, however, that they stand on a different footing, as they have no well defined rights but are dependent on the grant of the government. As Sir Henry Maine expressed it, though the states are in enjoyment of several sovereign rights, ' by far the largest part of sovereign rights has obviously resided in practice with the British Government, and among the rights it has exercised appears to me an almost unlimited interference for the better order of the states.' Still even the smallest of them constitutes a separate political community and as such must be classed with the Indian States.

[1] *Sir Henry Maine, A Brief Memoir*, by the Right Honourable Sir M. E. Grant, with some of his Indian Speeches : John Murray, 1892, p. 321.

APPENDIX II

THE MEDIATISED STATES

THE mediatised states which form the strictly feudatory portion of the Indian States constitute an order by themselves, whose prerogatives, privileges and political rights differ fundamentally from those of the sovereign states. Their inclusion in the category of Indian States has been the cause of much confusion. The mediatised states are the domains of chiefs who were or are themselves dependent on other rulers, but whose position and rights have been guaranteed by the British Government. The problem first arose in Malwa and Bundelkund.[1] When Malwa and Central India were pacified there existed a large number of petty chiefs tributary to the great Mahratta States like Gwalior and Indore. The British Government, while guaranteeing nominal sovereign rights to these suzerain states, limited their exercise and undertook to maintain the autonomy and rights of the minor chiefs from encroachment from their erstwhile sovereigns. Such guaranteed chiefs are of two classes, those in whose administration the sovereign ruler is expressly excluded from interference, as Ratlam, and those who have no such guarantee, as Bagli. In the case of the former, their succession and adoption have to be recognised only by the British Government, and the sovereign ruler has no right of intervention. In the case of the latter the immediate sovereign has a right to be heard about legitimacy and descent. In the case of Bagli the adoption of Raghu Nath Singh was questioned by Scindia in 1866, but the British Government held it to be valid.

No mediatised chiefs have power of life and death, and their civil and criminal jurisdiction is exercised under the supervision of the Political Agent. They have no rights of a residuary nature, and their authority is strictly limited to what is expressly granted.

It is also important to understand the position of the mediatised chiefs who have an intermediate sovereign like Sikar, Khehtri, and other Rajputana chiefs, which are really sub-states whose

[1] Aitchison, vol. iv. p. 2.

direct sovereign has complete powers over them except that of annexation. The position of these states, such as those of Bundelkund, Orissa and the Simla Hills, differs materially from that of the major Princes. These territories are held not by virtue of direct treaties but as a result of settlement with a superior, by a system of general pacification. The Mahikanta agency, which contains so many minor rulers, was under the sovereignty of the Gaekwar and was taken over by agreement with him, and the states in the agency have only those rights which are guaranteed to them. The states of the Simla Hills were acquired after the war with Nepal, and the Orissa states were feudatories of the Rajah of Nagpur. In Bundelkund only three states have direct treaty rights; the others hold their territory under *Ikrarnamahs* or Deeds of Allegiance. The engagements with states held under the *Ikrarnamahs* are generally alike. They declare, generally, 'that the territory was acquired by cession from the Peishwa (or any other sovereign ruler, as the case may be) and *annexed* to British dominions, but that the states of the chiefs were continued to them out of motives of justice, benevolence and good faith. They bind the chiefs to implicit submission, loyalty and attachment to the British Government.... They are liable to such control as the British Government may see fit to exercise, and the rights and powers of the chiefs are limited to those that have been expressly conferred.'[1] How far the rights of these chiefs who hold their territory under *Ikrarnamah* are limited can be seen from the following clauses of the Deed of Allegiance, dated October 29, 1846, executed by Rajah Ram Singh of Nalagad:

I recognise the right of the people to appeal to the local British agent against oppression and injustice. I engage on pain of forfeiture of the grant to pay implicit obedience to any advice or remonstrance which the British agent may have occasion to offer on their behalf.[2]

In another grant it is declared:

Be it known that the grant has been made on condition of good behaviour and of service military and political at any time of general danger or disturbance.

It is clear that the source, extent and nature of the rights possessed by these states differ fundamentally from the rights of ruling states. These rulers who hold under *Ikrarnamah* have

[1] Aitchison, vol. v. p. 17. [2] *Ibid.*, vol. viii. p. 325.

no sovereignty of any kind, and their authority is derivative and not inherent. The rule was continued ' by grace,' and they hold their territory subject to conditions made explicit in the *Ikrar-namah*. They have military and political obligations, and the residuary rights do not belong to them. Their subjects have the right of direct appeal. The political tie is feudal, and is not based on reciprocal obligations.

APPENDIX III

NOTE I

TREATY WITH THE NIZAM

TREATY of perpetual and general defensive alliance, between the Honourable the English East India Company and His Highness the Nabob Nizam ul Mulk Asoph Jah Bahadur Soubahdar of the Deccan, his children, heirs and successors; settled by Captain James Achilles Kirkpatrick, Resident at the Court of His Highness, by virtue of the powers delegated to him by the most noble Richard, Marquess Wellesley, etc., etc.

Whereas, by the blessing of God, an intimate friendship and union have firmly subsisted for a length of time between the Honourable Company and His Highness the Nabob Nizam ul Mulk Asoph Jah Bahadur and have been cemented and strengthened by several treaties of alliance to the mutual and manifest advantage of both powers, who with uninterrupted harmony and concord, have equally shared the fatigues and dangers of war and the blessings of peace, are in fact become one and the same in interest, policy, friendship and honour. These powers, adverting to the complexion of the times, have determined, on principles of precaution and foresight, and with a view to the effectual preservation of constant peace and tranquillity, to enter into a defensive alliance, for the complete and reciprocal protection of their allies and dependents, against the unprovoked aggressions or unjust encroachments of all or any enemies whatever.

Article 1. The peace, union and friendship, so long subsisting between the states, shall be perpetual; the friends and enemies of either shall be friends and enemies of both; and the contracting parties agree that all former treaties and agreements between the two states, now in force and not contrary to the tenor of this agreement, shall be confirmed by it.

Article 2. If any power or state whatever shall commit any act of unprovoked hostility or aggression against either of the contracting parties or against their respective dependents or allies, and after due representation shall refuse to enter into amicable

explanation, or shall deny the just satisfaction or indemnity which the contracting parties shall have required, then the contracting parties will proceed to concert and prosecute such further measures as the case shall appear to demand.

For the more distinct explanation of the intent and purpose of this agreement, the Governor-General in Council on behalf of the Company hereby declares that the British Government will never permit any power or state whatever to commit with impunity any act of unprovoked hostility or aggression against the rights or territories of His Highness the Nizam, but will at all times maintain the same, in the same manner as the rights and territories of the Honourable Company are now maintained.

Article 3. With a view to fulfil this treaty of general defence and protection, His Highness the Nabob Asoph Jah agrees that two battalions of sepoys and one regiment of cavalry with a due proportion of guns and artillerymen shall be added in perpetuity to the present permanent subsidiary force of six battalions of sepoys of one thousand firelocks each and one regiment of cavalry five hundred strong (with their proportion of guns and artillerymen) so that the whole subsidiary force furnished by the Hon'ble East Company to His Highness shall henceforward consist of eight battalions of sepoys (or eight thousand firelocks) and two regiments of cavalry (or one thousand horse) with their requisite complement of guns, European artillerymen, Laskars and pioneers fully equipped with warlike stores and ammunition ; which force is to be stationed in perpetuity in His Highness's territories.

Article 4. The pay of the above-mentioned additional force shall be calculated at the rate of pay of the existing subsidiary force and shall commence from the day of the entrance of the said additional force into His Highness's territories.

Article 5. (Territory assigned for payment.)

Article 6. (Territory exchanged.)

Articles 7 *to* 11. (Details of territorial exchange.)

Article 12. The contracting parties will employ all practical means to prevent calamity of war ; and for that purpose, will at all times be ready to enter into amicable explanations with other states, and to cultivate and improve the general relations of peace and amity with all the powers of India ; but if a war should unfortunately break out between the contracting parties and any other power whatever, then His Highness the Nabob Asoph Jah engages that with the reserve of two battalions of sepoys, which are to remain near His Highness's person, and the residue of the British subsidiary forces joined by six thousand infantry and nine thousand horse of His Highness's own troops and making together an army

of twelve thousand infantry and ten thousand cavalry with their requisite train of artillery and warlike stores of every kind, shall be immediately put into motion for the purpose of opposing the enemy, and His Highness further engages to bring into the field as speedily as possible the whole force which he may be able to supply from his dominions with a view to the effectual prosecution and the speedy termination of the said war, the Honourable Company in the same manner engaging on their part in this case to employ in active operations against the enemy the largest force they may be able to furnish over and above the said force.

Article 13. (Deals with collection of stores.)

Article 14. (About grain and other provision to be supplied by the Nizam.)

Article 15. As by the present treaty the union and friendship of the two states are so firmly cemented as that they may be considered one and the same, His Highness the Nizam engages neither to commence nor to pursue in future any negotiations with any other power whatever without giving previous notice and entering into mutual consultation with the Honourable East India Company's Government; and the Hon'ble Company's Government on their part declare that they have no manner of concern with any of His Highness's children, relations, subjects or servants with respect to whom His Highness is absolute.

Article 16. As, by the present treaty of general defensive alliance, mutual defence and defence against all enemies are established, His Highness the Nabob Asoph Jah consequently engages never to commit any act of hostility or aggression against any power whatever; and in the event of differences arising, whatever adjustment of them the Company's government, weighing matters in the scale of truth and justice, may determine shall meet with full approbation and acquiescence.

Article 17. (About collection of taxes by the Nizam from Sholapur and Gudwall Zamindars and the right to use the subsidiary force against them in cases of default.)

Article 18. Whereas by the favour of Providence a perfect understanding, harmony and concord have long and firmly subsisted between the Hon'ble East India Company, His Highness the Nabob Asoph Jah, His Highness the Peishwa Rao Pandit Pradhan Bahadur and Rajah Raghoji Bonsalah, therefore, should His Highness Rao Pandit Pradhan and Rajah Raghoji Bonsalah or either of them express a desire to participate in the benefits of the present defensive alliance which is calculated to strengthen and perpetuate the foundations of general tranquillity, the contracting parties will readily admit both or either of the said

powers to be members of the present alliance on such terms and conditions as shall appear just and expedient to the contracting parties.

Article 19. The contracting parties being actuated by a sincere desire to promote and maintain general tranquillity, will admit Dowlut Rao Scindia to be a party to the present treaty whenever he shall satisfy the contracting parties of his disposition to cultivate the relations of peace and amity with both states and shall give such securities for the maintenance of tranquillity as shall appear to the contracting parties to be sufficient.

Article 20. (Deals with the ratification and exchange of the document.)

Signed, Sealed and Exchanged at Hyderabad on the 12th October, A.D. 1800, on 22nd Jamma adie ul Awul Anno Higerea 1215.

Signed : J. A. KIRKPATRICK.

NOTE II

THE UDAIPUR TREATY

TREATY between the Honourable the English East India Company and Maharana Bheemsingh Rana of Oudeypore, concluded by Mr. Theophilus Metcalfe on the part of the Hon'ble Company in virtue of full powers granted by His Excellency the Most Noble the Marquis of Hastings, K.G., Governor-General, and Thakoor Ajeet Singh on the part of the Maharana in virtue of full powers conferred by the Maharana aforesaid.

Article 1. There shall be perpetual friendship, alliance and unity of interests between the two states from generation to generation and the friends and enemies of one shall be the friends and enemies of both.

Article 2. The British Government engages to protect the principality and territory of Oudeypore.

Article 3. The Maharana of Oudeypore will always act in subordinate co-operation with the British Government and acknowledge its supremacy and will not have any connection with other chiefs or states.

Article 4. The Maharana of Oudeypore will not enter into any negotiation with any chief or state without the knowledge and sanction of the British Government; but his usual amicable correspondence with friends and relations shall continue.

Article 5. The Maharana of Oudeypore will not commit

aggressions upon any one ; and if by accident a dispute arise with any one it shall be submitted to the arbitration and award of the British Government.

Article 6. One-fourth of the revenues of the actual territory of Oudeypore shall be paid annually to the British Government as tribute for five years ; and after that term three-eighths in perpetuity. The Maharana will not have any connection with any other power on account of tribute ; and if any one advance claims of that nature the British Government engages to reply to them.

Article 7. Whereas the Maharana represents that portions of the dominions of Oudeypore have fallen by improper means into the possession of others and solicits the restitution of those places ; the British Government from want of accurate information is not able to enter into any positive engagement on this subject, but will always keep in view the renovation of the prosperity of the state of Oudeypore, and after ascertaining the nature of each case will use its best exertions for the accomplishment of that object on every occasion it may be proper to do so. Whatever places may thus be restored to the state of Oudeypore by the aid of the British Government three-eighths of their revenue shall be paid in perpetuity to the British Government.

Article 8. The troops of the state of Oudeypore shall be furnished according to its means at the requisition of the British Government.

Article 9. The Maharana of Oudeypore shall always be absolute in his own country and the British jurisdiction shall not be introduced into that principality.

Article 10. The present treaty of ten articles, having been concluded at Delhi and signed and sealed by Mr. Charles Theophilus Metcalfe and Thakoor Ajeet Singh Bahadur, the ratification of the same by His Excellency the Most Noble the Governor-General and Maharana Bheemsingh shall be mutually delivered within a month from this date.

Signed : C. T. METCALFE.
Signed : THAKOOR AJEET SINGH.
Signed : HASTINGS.

Ratified by His Excellency the Governor-General this 22nd day of January, 1818, in camp Oocher.

Signed : J. ADAM,
Secretary to Governor-General.

NOTE III

(The following is a sample of the *Fael Zamin* executed by the Kathiawad chiefs.)

'Fael Zamin' of the Chief of Gondal

Written by Barot Karar son of Fulsji Rupsinghji of Nara to Shrimant Rao Sir Sena Khas Khel Shamsher Bahadoor.

To wit,—That I, of my own free will, have given to Shrimant Pandit Pradhan and to the government of the Gaekwar on behalf of Jadeja Dwaji and Kunwar Natuji of the Taluka Gondal Dhoraji constant and efficient security against exciting disturbances (*fael zamin*) for the two shares consisting of the entire province as follows :

Article 1. That I will not have a feud with any other (Thalukdar) nor will I harbour the outlaws of any other (Thalukdar) whether Kathi or Rajput, nor will incite any other person to commit any act of violence, nor will I encroach upon the boundary of another. I agree to act as has been the custom hitherto ; if any one's Bhayat should come and write over to me for their lands or village, I will not purchase such lands or village. I will not revenge myself upon any of my past enemies. I will not harbour thieves in my limits, but if I keep any in my country it shall be under proper precautions. I will not plunder in the Thaluka of any other chief or on the high road. If any impoverished landowner should be in want, and write over his land or village, I shall report the matter to government and only purchase them after obtaining permission. And if I should ever wish to write over my lands to any one I will only write them over after obtaining the government's permission.

Article 2. I will not associate with any delinquent or criminal whether one of the Shreement Shree's government or of the Company Bahadur's.

Article 3. On both sides of us are situated the Mahats of Shrimant Pant Pradhan and the Gaekwar government and also those of the Honourable Company. In these Mahats I will not commit any robberies or make any plundering incursions, nor will I in any way molest any merchant or traveller but will supply them with labourers and guards and thus escort them beyond my frontier. The owner of the village, within the limits of which a merchant or traveller may suffer loss, shall be responsible for the same, and if the loss be sustained in the village of a Thalukdar,

the Thalukdar shall be responsible and shall produce the real thief.

Article 4. If I have encroached on the frontier of any other (*Zamindar*) by force or purchased the land of any one knowing him to be impoverished then I agree to assign such land on fair terms and afterwards make no claims for it.

Article 5. According to the above conditions I execute this deed and make Jamsu Jasaji of the Navanagar Taluka counter security for it; and agree to fulfil the (terms of the) same as above. Should the Sarkar's *mohsal* come on account of any failure to observe this agreement, then I consent to give such satisfaction of the case in point as the Sarkar and their officials may demand and together with the daily expenses and fine imposed by the *mohsal*.—Kartak Sudh, 22nd Samvat, 1864.

Signature of the Security.
Signature of the Counter Security.

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